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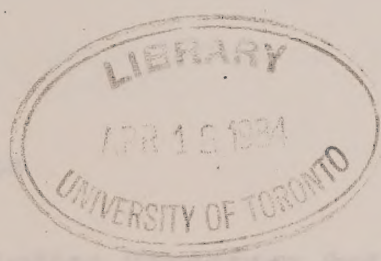
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Government
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FEDERAL-PROVINCIAL CONFERENCES OF
ATTORNEYS GENERAL, MINISTERS RESPONSIBLE FOR CRIMINAL JUSTICE
AND MINISTERS RESPONSIBLE FOR CORRECTIONS

Final Agenda



OTTAWA (Ontario)
July 11 - 12, 1983

1982

FEDERAL LEGISLATION
ATTORNEYS GENERAL, MINISTERS RESPONSIBLE FOR CRIMINAL JUSTICE
AND MINISTERS RESPONSIBLE FOR CORRECTIONS

CRIMINAL JUSTICE FORUM

1. Federal-Provincial Forum
2. National Forum
3. Parliamentarian Committee Report on Violence in the Family
4. Community Participation in Crime Prevention
5. Status Report on Criminal Law Review
6. National
7. The Proposals
8. The Forum
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FEDERAL-PROVINCIAL CONFERENCES OF
ATTORNEYS GENERAL, MINISTERS RESPONSIBLE FOR CRIMINAL JUSTICE
AND MINISTERS RESPONSIBLE FOR CORRECTIONS

OTTAWA

July 11-12, 1983

FINAL AGENDA

A - CRIMINAL JUSTICE FORUM

1. Federal-Provincial Task Force Report on Justice for Victims of Crime
2. Parliamentary Committee Report on Violence in the Family
3. Community Participation in Crime Prevention
4. Status Report on Criminal Law Review
5. Sentencing
6. Hate Propaganda
7. Vandalism
8. Telephonic Search Warrants
9. Drinking and Driving Including Mandatory Bodily Substance Testing
10. Obscenity, Pornography and Soliciting
11. S-32/Gating

FEDERAL-PROVINCIAL FORUM
ATTORNEYS GENERAL, MINISTERS RESPONSIBLE FOR CRIMINAL JUSTICE
AND MINISTERS RESPONSIBLE FOR LEGISLATIONS

87 - Canadian Society of Legal Education

Federal-Provincial Working Group on Crime
July 11-12, 1987

Young Offenders Legislation

LEGAL AGENDA

Federal-Provincial Working Group on Crime
and Police Act Amendment

CRIMINAL JUSTICE FORUM

ATTORNEYS GENERAL FORUM

Federal-Provincial Task Force Report on Justice for

Victims of Crime

Legal Aid and Legal Services
Young Offenders

Parliamentary Committee Report on Violence in the Family

Proposed Amendment to Criminal Code Section 97

Community Participation in Crime Prevention

Federal-Provincial Committee Report on Enforcement

Justice and Community Orders
Status Report on Criminal Law Review

Proposed Federal Legislation in response to Forum

Legal Agenda

Federal-Provincial Working Group Report on Legal Services
for Justice in Canada

Telephonic Search Warrants

Drinking and Driving Including Mandatory Bodily
Substance Testing

Obscenity, Pornography and Soliciting

8-32/Caring

12. C-157 - Canadian Security Intelligence Service
13. Federal-Provincial Working Group Report on Enterprise Crime
14. Young Offenders Legislation
15. Federal-Provincial Working Group Report on Police Powers and Police Accountability

B - ATTORNEYS GENERAL FORUM

1. Legal Aid: Adult Criminal
Young Offenders
2. Proposed Constitutional Amendment Section 96.
3. Federal-Provincial Committee Report on Enforcement of Maintenance and Custody Orders.
4. Proposed Federal Legislation in respect of Divorce
5. Uniform Evidence Act
6. Federal-Provincial Working Group Report on Central Registry for Security Interests in Aircraft

12. C-127 - Canadian Security Intelligence Service

13. Federal-Provincial Working Group Report on Enterprise Crime

14. Young Offenders Act, 1984

15. Federal-Provincial Working Group Report on Police Powers and Police Accountability

II - ATTORNEY GENERAL

1. Legal Aid: Adult Criminal
Young Offenders

2. Proposed Constitutional Amendment

3. Federal-Provincial Committee Report on Enforcement of Maintenance and Custody Orders

4. Proposed Federal Legislation in respect of Divorce

III - UNIFORM EVIDENCE ACT

5. Federal-Provincial Working Group Report on Central Registry for Security Interests in Aircraft

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CONFERENCES FEDERALES-PROVINCIALES DES
PROCUREURS GENERAUX, DES MINISTRES RESPONSABLES
DE LA JUSTICE PENALE ET DES MINISTRES RESPONSABLES
DU SYSTEME CORRECTIONNEL

ORDRE DU JOUR

1. Rapport du groupe d'états fédéral-provinciaux sur la
justice pour les victimes d'actes criminels

2. Rapport du COM Ordre du jour définitif

3. Participation de la communauté dans la prévention
du crime

- Session nationale de la recherche sur le crime
- Contrôle de droit

4. Rapport d'audit sur la révision de loi

5. La détermination de la peine

6. Propaganda national

7. Mandat

8. Télémandats de perquisition

9. Conquête en état d'urgence y compris la présence
obligatoire de personnes armées



OTTAWA (Ontario)

Les 11 et 12 juillet 1983

CONFERENCE INTERNATIONALE DE LA JUSTICE
LE 12 JUILLET 1953
DOCUMENTS 930-117 001

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CONFERENCE INTERNATIONALE DE LA JUSTICE
LE 12 JUILLET 1953
DOCUMENTS 930-117 001

SECTION 121-121

Rapport de la Commission de la Justice
sur les activités de la Commission

La Commission de la Justice a été créée
par la loi du 12 juillet 1953

La Commission de la Justice a été créée
par la loi du 12 juillet 1953

La Commission de la Justice a été créée
par la loi du 12 juillet 1953

Rapport d'activité de la Commission de la Justice

La Commission de la Justice a été créée

Propagande nationale

Annuaire

Télémandats de propagande

Conduite en état d'ébriété y compris le préjudice
obligatoire de assistance obligatoire
Les 11 et 12 juillet 1953

CONFERENCES FEDERALES-PROVINCIALES DES
PROCUREURS GENERAUX, DES MINISTRES RESPONSABLES
DE LA JUSTICE PENALE ET DES MINISTRES RESPONSABLES
DU SYSTEME CORRECTIONNEL

OTTAWA

Les 11 et 12 juillet 1983

ORDRE DU JOUR DEFINITIF

A - SECTION JUSTICE PENALE

1. Rapport du groupe d'étude fédéral-provincial sur la justice pour les victimes d'actes criminels
2. Rapport du comité parlementaire sur la violence au sein de la famille (Femmes battues)
3. Participation de la communauté dans la prévention du crime
 - Semaine nationale de la prévention du crime
 - Journée de droit
4. Rapport d'étape sur la révision du droit criminel
5. La détermination de la peine
6. Propagande haineuse
7. Vandalisme
8. Télémandats de perquisition
9. Conduite en état d'ébriété y compris le prélèvement obligatoire de substances organiques

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10. Obscénité, pornographie et sollicitation
11. S-32/Blocage
12. C-157 - Service canadien du renseignement de sécurité
13. Rapport du groupe de travail fédéral-provincial sur le crime érigé en industrie licite
14. Loi sur les jeunes contrevenants
15. Rapport du groupe de travail fédéral-provincial sur les pouvoirs et la responsabilité de la police

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Jeunes contrevenants
2. Projet de modification constitutionnelle, article 96
3. Rapport du comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant
4. Projet de loi fédérale en matière de divorce
5. Loi uniforme sur la preuve
6. Rapport du groupe de travail fédéral-provincial sur le registre central des sûretés réelles sur aéronef

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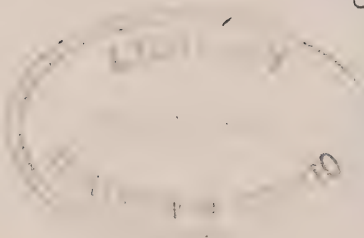
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FEDERAL-PROVINCIAL CONFERENCES OF
ATTORNEYS GENERAL, MINISTERS RESPONSIBLE FOR CRIMINAL JUSTICE
AND MINISTERS RESPONSIBLE FOR CORRECTIONS

Report presented to Deputy Ministers of Justice,
Deputy Attorneys General and Deputy Solicitors General
by the Federal-Provincial Committee of Criminal Justice
Officials with respect to the McDonald
Commission Report

June 1983

Ontario



OTTAWA (Ontario)
July 11 - 12, 1983.

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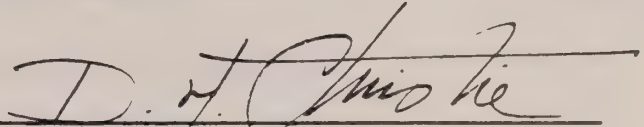
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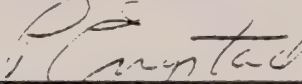
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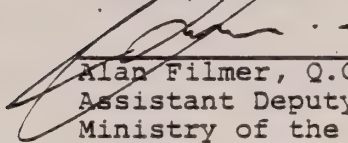
REPORT TO DEPUTY MINISTERS OF JUSTICE,
DEPUTY ATTORNEYS GENERAL AND
DEPUTY SOLICITORS GENERAL BY
THE FEDERAL/PROVINCIAL COMMITTEE
OF CRIMINAL JUSTICE OFFICIALS
WITH RESPECT TO THE MCDONALD
COMMISSION REPORT



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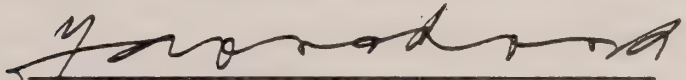


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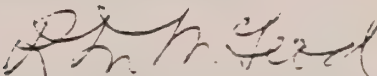
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PART 1

A. INTRODUCTION AND EXECUTIVE SUMMARY

In the course of making a number of recommendations for legislative change the McDonald Commission referred to what it described as "the inherent contradiction", -- an expression used to capsulize the belief that in order to properly enforce the law, the police may on occasion themselves have to break the law.

The Commission's Report espouses the principle that the police must at all times obey the law. Your committee is in full agreement with that fundamental principle. Beyond this point of agreement however, your committee is in significant disagreement with the McDonald Commission in both its methodology and its recommendations.

We have reported earlier (Appendix A and B) with respect to our view that the Commission's original terms of reference caused them to enter into their deliberations on the basis of a false premise, -- a belief that it was appropriate to search for activity that was "not authorized or provided for by law" rather than searching for activity that was "prohibited by law".

We intend, in Part II below, to outline our recommendations with respect to 24 areas of the law and/or its application by the police on which the McDonald Commission arrived at conclusions that the police had been "breaking the law" or would have to "break the law" in order to fairly and effectively carry out their duty to enforce the law.

In examining these 24 areas we have considered 3 possible responses:

- A. Legislation to provide for pre-event judicial authorization for police action;
- B. Legislation to provide for pre-event ministerial approval or authorization for police action;
- C. Legislation to provide an exemption for police action;
- D. New Policy directives to the police based upon an accurate statement of the statutory and common law powers of peace officers (as distinct from the McDonald Commission's statements of same);
- E. No action necessary.

As indicated in Part II, possible response (D) or (E) is our recommended course of action with respect to most of these areas. The ability to rely on this course of action, rather than legislating, is dependent upon the acceptance of our view, that in most areas, a proper application of the Rule of Law including the Statutory and Common law duties, powers and responsibilities of peace officers, results in there being no "contradiction" at all.

Our analysis leads us to the conclusion that with appropriate and uniform guidelines for police and Crown Counsel, legislation will not be required in many of these areas.

Our analysis is of course subject to future judicial consideration of any one or more of the sub-issues -- a prospect which can be reasonably anticipated in light of at least three cases currently before the courts. Reference is made to these cases in Part III.

In Part II we examine the Rule of Law and more particularly the manner in which the Statutory and Common Law duties, responsibilities and powers of peace officers can be accurately stated in advance of proposed police action in order to properly guide both the police and Crown Counsel (in their provision of advice to the police) before police investigative steps are undertaken.

We conclude in Part II as follows:

- (a) The Rule of Law must at all times govern with the result that no peace officer is justified in breaking the law. It should be understood however that peace officers have responsibilities and commensurate authority not vested in persons who are not peace officers.
- (b) If the Rule of Law is applied in the proper way by examining the ordinary law of the realm in a global sense, the McDonald Commission's conception of the "inherent contradiction" is demonstrably in error.
- (c) As a starting point in the examination of that total body of law we must attempt to ascertain the duties, responsibilities, rights and privileges of a police officer.
- (d) "It is not only impossible but inadvisable to attempt to frame a definition which will set definite limits to the powers and duties of police officers": Schacht v. O'Rourke, supra applying the Waterfield Principle Part I.
- (e) "It is infinitely better that the courts should decide as each case arises whether, having regard to the necessities of the case and the safeguards required in the public interest, the police are under a legal duty, in the particular circumstances". Schacht v. O'Rourke.
- (f) That in determining whether a police officer was acting lawfully or unlawfully in discharging a duty or responsibility imposed upon him the test in Waterfield should be applied.

(g) To apply the Waterfield test we must:

- I. consider what the police officer was actually doing and in particular whether his conduct was prima facie an unlawful interference with a person's liberty or property.
- II. if so, it is then relevant to consider whether
 - (A) such conduct falls within the general scope of any duty imposed by statute or recognized at common law

and

- (B) whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with that duty.

(h) In applying the Waterfield test to the particular police conduct in question, it should first be determined whether the conduct was prima facie an unlawful interference with a person's liberty or property (Waterfield I). If the conduct falls outside Waterfield I, that is the end of the matter and the conduct is lawful.

If the conduct falls within Waterfield I, it must then be determined whether it comes within Waterfield IIA. If it does not, then the conduct is probably unlawful.

If the conduct does come within Waterfield IIA, then it must be determined whether it also comes within Waterfield IIB. If it does, then it is probably unlawful. If, however, the conduct does not come within Waterfield IIB, it is lawful.

- (i) The Waterfield test presupposes an "interference with a person's liberty or property" because the potential illegality in that case was such as to come within that terminology. Other police actions may not involve "interference with a person's liberty or property", e.g. false identification or registration procedures, but may nevertheless be prima facie breaches of statutory offences.

In Waterfield the Court stated at p.47:

"Thus, while it is no doubt right to say in general terms that police constables have a duty to prevent crime and a duty, when crime is committed, to bring the offender to justice, it is also clear from the decided cases that when the execution of these general duties involves interference with the person or property of a private person, the powers of constables are not unlimited."

In our view this paragraph is open to at least two interpretations. It may be suggesting that when the police activity does not involve any "interference with a person's liberty or property", the powers associated with the police officer's duty to prevent crime are not limited to the same extent. If that is so, in a case which does not involve "interference with a person's liberty or property", but does involve a prima facie breach of a statutory offence (e.g. false hotel registration, or more importantly certain offences involving the administration of justice), all that the officer would have to show would be that he was carrying out his duty to prevent crime and was acting bona fide. On the other hand the Court may not have been directing its attention to this type of situation when it concentrated on the facts before it and therefore was not intending to suggest that the powers in such a case were limited only by (i) a very widely stated duty (e.g. prevent crime) and (ii) the officer's subjective view as to what was reasonable. We believe that the wiser course is to apply the Waterfield Principle Part II to both types of cases. We therefore suggest that where the police activity is prima facie a breach of a statutory offence (even though there is no prima facie unlawful interference with a person's liberty or property) that activity should be measured as in Steps IIA and B set out in paragraph (g) above.

- (j) Although the above-mentioned procedure will not always be able to pre-determine whether a police officer will be acting lawfully or not it can be applied with sufficient precision to enable Crown Law Officers to propose guidelines and advise the police in advance of any activity.

In Part III we examine 24 areas of the McDonald Commission Recommendations and apply as against those recommendations the five alternative responses referred to above. Our conclusions may be tabulated as follows:

<u>Response</u>	<u>Area (and Number from our Part III) of McDonald Commission Recommendations</u>
A. Legislation to provide for pre-event judicial authoriza-	3. Surreptitious Entry Without Warrant. p.75 6. Searching For And/Or Seizing Articles (Not Referred to in a Search Warrant) When The Police Officer is Otherwise Lawfully on the Premises. p.80 11. Mail Check. p.89 12. Access by the Police To Confidential Information. p.90
B. Legislation to provide for pre-event ministerial approval or authorization for police action.	14. False Identification. p.94
C. Legislation to provide an exemption for police action.	13. Physical Surveillance. p.91 (see category D below as well)
D. New policy directives to the police based upon an accurate statement of the statutory and common law powers of peace officers (as distinct from the McDonald Commission's statements of same).	1. Electronic Surveillance - The Dass/Dalia Entry Issue. p.59 2. Moving a Motor Vehicle or Other Chattel for the Purpose of Installing an Interception Device Pursuant to a Part IV.I Authorization. p.72 8. Disclosure of Intercepted Private Communications to Foreign Peace Officers. p.86 13. Physical Surveillance. p.91 (see category C above as well)
E. No action necessary	4. Civil Trespass and Provincial Trespass Legislation. p.77

E. No action necessary

5. The Offences of (1) Break and Enter, (2) Theft, (3) Mischief, (4) Trespass at Night, (5) Possession of House-Breaking Instruments and (6) Conspiracy to Commit Trespass. p.79
7. Alleged Possible Breaches of Other Legislation (e.g. Theft of Electrical Power (s.287 of The Criminal Code) And Building Code By-Laws, etc.) p.8
9. Alleged Breach by the R.C.M.P. Of s.178.2 (Non-Disclosure) in Reporting to Provincial Attorneys General for Purposes of Their Annual Reports to The Legislatures. p.87
10. Independent Review Committee. p.88
15. Offences of Forgery, False Pretenses, Impersonation and Intimidation. p.96
16. Income of Police Operatives for Tax Purposes. p.97
18. The Offence of Breach of Trust (Criminal Code s.111) p.99
19. The Offence of Secret Commission (Criminal Code, s.383). p.100
20. Interrogation Procedures. p.101
21. Entrapment. p.102
22. Exclusionary Rule. p.103

It should also be noted that further work may be required in the following areas:

Drafting of Legislation

3. Surreptitious Entry Without Warrant
6. Searching For And/Or Seizing Articles (Not Referred to In a Search Warrant) When The Police Officer is Otherwise Lawfully on the Premises.
11. Mail Check.
12. Access by the Police To Confidential Information.
13. Physical Surveillance.
14. False Identification.

Drafting of Guidelines or Directives

1. Electronic Surveillance - The Dass/Dalia Entry Issue.
2. Moving a Motor Vehicle or Other Chattel for the Purpose of Installing an Interception Device Pursuant to a Part IV.I Authorization.
8. Disclosure of Intercepted Private Communications to Foreign Peace Officers.
13. Physical Surveillance.

Research

12. Access by the Police To Confidential Information.
14. False Identification.

PART II - LEGAL ANALYSIS

A. THE RULE OF LAW

In An Introduction to the Study of the Law of the Constitution, Dicey, A.V., 10th Ed., Macmillan Press, the learned author formulated what is perhaps the most significant underpinning of the Common Law. While we are primarily concerned with the second branch of the Rule of Law, it is useful to consider it in the context of the entire principle. At pp. 183-84, the learned author states:

"Two features have at all times since the Norman Conquest characterized the political institutions of England.

The first of these features is the omnipotence or undisputed supremacy throughout the whole country of the central government. This authority of the state or the nation was during the earlier periods of our history represented by the power of the Crown. The King was the source of law and the maintainer of order. The maxim of the courts, tout fuit in luy et vient du luy at commencement, was originally the expression of an actual and undoubted fact. This royal supremacy has now passed into that sovereignty of Parliament.

and at pp.187-88

"When we say that the supremacy of the rule of law is a characteristic of the English constitution, we generally include under one expression at least three distinct though kindred conceptions.

We mean, in the first place, that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint."

and at p.193

"We mean in the second place, when we speak of the 'rule of law' as a characteristic of our country, not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals."

and at p.195

"There remains yet a third and a different sense in which the 'rule of law' or the predominance of the legal spirit may be described as a special attribute of English institutions. We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the courts; whereas under many foreign constitutions the security (such as it is) given to the rights of individuals results, or appears to result, from the general principles of the constitution."

NOTE: The effect of the Proclamation April 17, 1982 of the Constitution Act 1982 on the applicability of this third branch of the Rule of Law in Canada should be noted but is not discussed further here because of the primary relevance of the second branch of the Rule of Law.

The position of the police and their activities vis-a-vis "The Law" must come within and be compatible with the second branch of the Rule of Law. To propose otherwise would be to suggest that the police are above the law, -- a proposition which is not only legally unsound but contrary to the best interest of the administration of justice.

What is required therefore is a closer examination of the second branch of the Rule of Law. In restating the second part of the Rule, Dicey continues at pp.202-203:

"It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts; the 'rule of law' in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals; there can be with us nothing really corresponding to the 'administrative law' (droit administratif) or the 'administrative tribunals' (tribunaux administratifs) of France. The notion which lies at the bottom of the 'administrative law' known to foreign countries is, that affairs or disputes in which the government or its servants are concerned are beyond the sphere of the civil courts and must be dealt with by special and more or less official bodies. This idea is utterly unknown to the law of England, and indeed is fundamentally inconsistent with our traditions and customs."

"The Law" as applied to all groups and persons is identical and allows for no exemption. Of critical importance are the following phrases:

"No Man is above the law"

"Every man.....is subject to the ordinary law of the realm"

"equality before the law"

"the equal subjection of all classes to the ordinary law of the land"

"excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens"

The fundamental error in the McDonald Commission's conception of the "inherent contradiction" was a failure to properly examine and apply the terms "the law" and "the ordinary law of the land". If certain police activities fall

outside of these terms, they are unlawful and cannot be permitted. Again we must heed the words of Dicey:

"In England the idea of legal equality, or of the universal subjection of all classes to one law administered by the ordinary courts, has been pushed to its utmost limit. With us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial governor, a secretary of state, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is any private and unofficial person. Officials, such for example as soldiers or clergyman of the Established Church, are, it is true, in England as elsewhere, subject to laws which do not affect the rest of the nation, and are in some instances amenable to tribunals which have no jurisdiction over their fellow countrymen; officials, that is to say, are to a certain extent governed under what may be termed official law. But this fact is in no way inconsistent with the principle that all men are in England subject to the law of the realm; for though a soldier or a clergyman incurs from his position legal liabilities from which other men are exempt, he does not (speaking generally) escape thereby from the duties of an ordinary citizen."

(emphasis added)

What then is meant by the term "The (ordinary) law of the Realm"?

The Oxford Dictionary begins it's several definitions of the term law as:

"Body of enacted or customary rules recognized by a community as binding".

Thus, "the law" as a concept must be viewed in its entirety. Although as lawyers we tend to compartmentalize the law into various branches or aspects we must not lose sight of it as a complete body of all known law at any particular moment in time.

The concept of "ordinary law" as defining the acceptable parameters of each person's acts and omissions must be looked at in a global sense. If "the law" is reviewed as a single body of statutes and other legislative instruments as well as the common law, it will be seen that this single body of law does not envelope each person or every factual situation in precisely the same way. Rather it has retained a flexible and dynamic shape with portions or aspects of it which apply only to certain individuals or groups of persons. It creates responsibilities with concurrent authority or powers to particular groups or individuals. For example, a doctor administering roadside surgery to an unconscious victim is permitted by the law to "assault" the body of the victim in so doing. While it is true that the law creates a fiction of implied consent to remove the doctor from an area of liability so long as he does not act negligently, it can be seen that this is a pocket of "the law" which applies only to those in such a situation and only in defined circumstances. So too, this pocket of the law has a limit; the doctor will remain within "the law" only so long as he does not act negligently. If he crosses the line by acting negligently, the special protection afforded to him by the law disappears. Similarly "the law" contains numerous aspects which apply only to specific individuals (e.g. section 25(4) of the Criminal Code) or apply only in particular fact situations. (e.g. the right to use force in self-defence or provocation - s.34 Criminal Code; see also s.30-33, 35-45, 90, 96).

At this point it is important to note that whenever "the law" imposes special obligations or duties on classes

14.

of persons, it attempts to create at the same time whatever power or authority is necessary to fulfill that responsibility. Section 26 of the Interpretation Act, a codification of a common-law principle, is perhaps the best example of this principle. The authority or power concurrently granted to those upon whom the law places a special responsibility is however limited to whatever is required to carry out that responsibility in a particular fact situation and no more.

This global approach is far more sound on general principles than the approach adopted by the McDonald Commission which chose to look at each aspect of the law in isolation. The aspect approach will invariably lead to conflict or contradiction and for that reason, among others, should be rejected when examining the position of any individual or group vis-a-vis "the ordinary law". If the above mentioned proposition is accepted, then it remains to examine "the ordinary law of the land" globally as it is relevant to police activity.

As a starting point it will be necessary to examine the general duties and responsibilities which various statutes and the common-law impose on the police. It then becomes necessary to examine any special powers or authority which the law bestows on the police in particular fact situations. Finally, in examining any particular act of a police officer, it will be necessary to determine whether his conduct has fallen outside of this single body of law. If it has, then his act may be said to be unlawful or outside "the ordinary law of the realm" and the "rule of law" will prevail. If, however, his conduct falls within "the law", then it is unnecessary to create new statutory rights or to prosecute or discipline the police officer for his alleged breach of the law because there is no breach. His conduct is lawful.

B. THE DUTIES, POWERS AND RESPONSIBILITIES OF THE POLICE

1. By Statute

Parliament and the Legislatures of all provinces have passed statutes defining the duties and powers of police forces acting within their jurisdiction. While the wording and scope of the various statutes differ, they are consistent with reference to imposing an obligation on police officers to prevent crime and preserve the peace. The relevant statutory provisions are as follows:

(a) R.C.M.P. Act, R.S.C. 1970 C. R-9

s.18 It is the duty of members of the force who are peace officers, subject to the orders of the Commissioner:

(a) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime, and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody;

(b) to execute all warrants, and perform all duties and services in relation thereto, that may, under this Act or the laws of Canada or the laws in force in any province, be lawfully executed and performed by peace officers;

(c) to perform all duties that may be lawfully performed by peace officers in relation to the escort and conveyance of convicts and other persons in custody to or from any courts, places of punishment or confinement, asylums or other places; and

(d) to perform such other duties and functions as are prescribed by the Governor in Council or the Commissioner.

(b) PROVINCIAL LEGISLATION (POLICE ACTS)

Alberta, R.S.A. 1980 c. P-12

s.31 (1) Every member of a police force has the power and it is his duty to

(a) perform all duties that are assigned to peace officers in relation to

(i) the preservation of peace,

(ii) the prevention of crime and of offences against the laws in force in Alberta, and

(iii) the apprehension of criminals and offenders and others who may lawfully be taken into custody,

and

(b) execute all warrants and perform all duties and services thereunder or in relation thereto that under the laws in force in Alberta may lawfully be executed and performed by peace officers.

(2) A member of a municipal police force has authority throughout Alberta in the execution of his duties as a member of the municipal police force for which he is appointed or when acting pursuant to a direction under subsection (3).

(3) The Solicitor General may at any time, with the oral or written consent of the chairman of the commission if there is one, or if none, of the mayor of an urban municipality, direct a member of the municipal police force to serve in any part of Alberta outside the boundaries of the municipality.

(4) The urban municipality shall be reimbursed by the Solicitor General for the salaries and expenses of any member of the municipal police force serving outside the urban municipality pursuant to a direction under subsection (3).

British Columbia, RSBC, c.331

- s.27 (1) The chief constable of a municipal force has, under the direction of the board, general supervision over the municipal force, and shall perform the other functions and duties assigned to him under the regulations of any Act.
- (2) A municipal force shall, under the direction of the chief constable, perform the duties and functions respecting the enforcement of municipal bylaws, the criminal law and the laws of the Province, and the general maintenance of law and order in the municipality, as may be assigned to it or to a peace officer by the board, under the regulations or under any Act.
- s.30 (1) Subject to subsection (2) and section 24(2), a municipal constable or a special municipal constable has, subject to the direction of the board, jurisdiction in the municipality of the board that appointed him to exercise and carry out the powers, duties, privileges and responsibilities that a police constable or peace officer is entitled or required to exercise or carry out at law or under any Act.
- (2) Where the minister believes an emergency exists outside the municipality in which a municipal constable or special municipal constable has jurisdiction, he may direct one or more municipal constables or special municipal constables to exercise their jurisdiction in the part of the Province in which the emergency exists.
- (3) Where the minister makes a direction under subsection (2), the Minister of Finance shall pay, from the consolidated revenue fund, the salary and other expenses of the municipal constable or special municipal constable during the period he is performing duties in the part of the Province in which the emergency exists.

(4) Notwithstanding subsection (1), a municipal constable has, while he is on duty in the course of his employment, the jurisdiction throughout the Province of a provincial constable.

(5) Where a municipal constable exercises his jurisdiction under subsection (4) outside the municipality of the board that appoint him, he shall, if possible, notify the provincial force or municipal force of the area in which he exercises his jurisdiction in advance, but in any case shall promptly after exercising his jurisdiction notify the provincial force or municipal force.

Manitoba

S.M. 1970, c.100-Cap.M225

s.5 Without restricting the generality of the foregoing, and subject to the direction of the commission, the members of the force shall

(a) perform all duties that are assigned to constables in relation to the preservation of peace, the prevention of crime and of offences against the laws in force in Manitoba and the apprehension of criminals and offenders and others who may lawfully be taken into custody;

(b) execute all warrants and perform all duties that under the laws in force in Manitoba may lawfully be executed and performed by constables, police or peace officers;

(c) perform such duties as may from time to time be assigned to them by the commissioner.

S.M. 1970, c.207-Cap.P150

s.287(2) Each constable shall hold office during the pleasure of the council, and has the same powers and privileges, and is subject to the same liability and to the performance of the same duties, and may act within the same limits, as a constable appointed by the Lieutenant Governor in Council.

New Brunswick, 1977, c.P-9.2

- s.12 (1) Each police officer appointed under this Act is charged with responsibility for
- (a) maintaining law and order,
 - (b) preventing offences against the law,
 - (c) enforcing penal provisions of the law,
 - (d) escorting and conveying persons in custody to or from a court or other place,
 - (e) serving and executing court process in respect of offences against the law,
 - (f) maintaining order in the courts, and
 - (g) performing all other duties and services that may lawfully be executed and performed by him,
- and shall discharge his responsibility
- (h) within the limits of the municipality for which he is appointed, and
 - (i) within the Province
 - (i) at the request of the Minister, or
 - (ii) when he is investigating a matter that arose wholly or partially within, or is pursuing a person fleeing from, the municipality for which he is appointed, but in such case he shall immediately notify the police force responsible for policing the area in which he is acting of the purpose of his investigation or action.
- (2) A member of the Royal Canadian Mounted Police who is investigating an alleged offence or otherwise is acting as a peace officer in an area policed by another police force shall immediately notify the police force responsible for policing the area in which he is acting of the purpose of his investigation or action.

Newfoundland 1970, c.58

- s.13 It is the duty of members of the force, subject to the orders of the Chief of Police, to
- (a) perform all police duties of any kind whatsoever that may be assigned to the force by the Minister from time to time;
 - (b) act as wardens, inspectors, patrolmen, guides or in other like capacities if so appointed under any of the laws of Canada or of the province; and
 - (c) perform such other duties and functions as are, from time to time, prescribed by the Lieutenant Governor in Council or the Minister.

Nova Scotia c.P-17

- s.16 (1) Each municipal police force and the chief officer and the officers of each municipal police force are charged with the enforcement of the penal provisions of all the laws of the Province and the municipality and any penal laws in force within the municipality except as otherwise directed by this Act or any other enactment or by the Attorney General.
- (2) Each municipal police officer shall have all the power and authority of a provincial constable under this Act
- (a) within the limits of the municipality for which he is appointed, and
 - (b) within the Province when he is acting outside the municipality for which he is appointed at the request of the Attorney General, or assisting a provincial constable or a member of the Royal Canadian Mounted Police Force who is ex officio a provincial constable or when he is pursuing a matter that arose within, or a person fleeing from, a municipality for which he is appointed.

- (3) Notwithstanding subsection (2), the Attorney General, by order in writing, may confer the power and authority of a provincial constable upon a member or the members collectively of a police force of any municipality.

Ontario R.S.O. 1980, c.381

- s.56 Every chief of police, other police officer and constable, except a special constable or a by-law enforcement officer, has authority to act as a constable throughout Ontario.
R.S.O. 1970, c.351, s.54.
- s.57 The members of police forces appointed under Part II, except assistants and civilian employees, are charged with the duty of preserving the peace, preventing robberies and other crimes and offences, including offences against the by-laws of the municipality, and apprehending offenders, and commencing proceedings before the proper tribunal, and prosecuting and aiding in the prosecuting of offenders, and have generally all the powers and privileges and are liable to all the duties and responsibilities that belong to constables.

(emphasis added)

Prince Edward Island R.S.P.E.I. 1974, c.P-9

- s.2(1) The force includes all officers, inspectors, constables, and men specially appointed for the enforcement of any statute of Prince Edward Island.
- (2) All the officers, members, clerks and employees of the force are responsible to the Minister of Justice and shall perform such duties and exercise such powers as may be prescribed under the provisions, rules and regulations made by or under this Act.
- s.8 The officers, constables, and members of the force shall have all the powers, privileges, rights and immunities conferred upon any policeman, police

constable, constable or peace officer under the Criminal Code (Canada) R.S.C. 1970, Chap. C-34 or under any statute of the province not inconsistent with the provisions in this Act.

- s.9 Every member of the force shall be ex officio a constable under the Fish and Game Protection Act.
- s.10 Every officer or member of the force shall be a constable under the Liquor Control Act R.S.P.E.I. 1974, Cap. L-17 and shall have all the powers, authorities, and immunities of a constable under the provisions of that Act.
- s.11 Every officer and member of the force shall be an inspector for the enforcement of the Highway Traffic Act.
- s.17 Every member of the Royal Canadian Mounted Police shall, while the agreement is in force, have all the powers, authorities, privileges, rights and immunities possessed and enjoyed by any policeman, police constable, constable or peace officer under any law of this province.
- s.18 Every member of the Royal Canadian Mounted Police shall, while the agreement is in force, be deemed to be a peace officer with power and authority to investigate breaches of provincial statutes and offences under the Criminal Code (Canada) R.S.C. 1970, Chap. C-34 and shall have the powers of peace officers and constables with regard to the arrest and detention of offenders.

Quebec, 1980, c.p-13

- s.2 The members of the Police Force and the municipal policemen shall be constables and peace officers in the entire territory of Quebec; the same shall apply to every special constable in the territory for which he is appointed, subject however, to the restrictions contained in the writing attesting his appointment.

s.39 The Police Force, under the authority of the Attorney General, shall be charged with maintaining peace, order and public safety in the entire territory of Quebec, preventing crime and infringements of the laws of Quebec and seeking out the offenders. Furthermore, notwithstanding section 67, if a municipal police force does not have the personnel, equipment or competence required to carry out its duties adequately, or for other serious cause, the Attorney General may, of his own initiative or at the request of a municipality, place the Police Force, by way of exception, temporarily in charge of keeping order, or making or conducting an inquiry, in the municipality.

s.67 It shall be the duty of every municipal police force and each member thereof to maintain peace, order and public safety in the territory of the municipality for which it is established and in any other territory in which in which such municipality has jurisdiction, to prevent crime and infringements of its by-laws and to seek out the offenders.

Saskatchewan, RSS c.P15

s.37 (1) A police force shall consist of a chief of police and such other officers and personnel as the board considers necessary.

(2) A member of a police force shall, before entering upon his duties, take and subscribe to an oath in form 1.

(3) Unless otherwise indicated in his appointment a member has the power and the responsibility to:

(a) perform all duties that are assigned to constables or peace officers in relation to:

- (i) the preservation of peace;
- (ii) the prevention of crime and offences against the laws in force in the municipality; and
- (iii) the apprehension of criminals, offenders, mentally ill persons and others who may lawfully be taken into custody.

(b) execute all warrants and perform all duties and services thereunder or in relation thereto that under the laws in force in the municipality may lawfully be executed and performed by constables or peace officers; and

(c) perform all duties that may lawfully be performed by constables or peace officers in relation to the escort and conveyance of persons in lawful custody to and from courts, places of confinement, correctional facilities or camps, hospitals or other places.

(4) Unless other wise indicated in the appointment, a member has authority to exercise throughout the province the powers and duties mentioned in subsection (3).

2. At Common Law

The last part of s.53 of the Ontario Police Act statutorily confers on police officers all of the powers, privileges, duties and responsibilities that belong to constables (at common law). Whether such statutory confirmation is necessary or not, it makes it clear that one must look at the common law to complete "the ordinary law of the land" (global concept) as it applies to police officers.

We adopt the following authorities as accurate statements of the law with respect to the functions of the police:

(1) Halsbury

206. General functions of constables.
The primary function of the constable remains as in the seventeenth century, the preservation of the Queen's peace (b). From this general function stem a number of particular duties additional to those conferred by statute and including those mentioned hereafter.

The first duty of a constable is always to prevent the commission of a crime (c). If a constable reasonably apprehends that the action of any person may result in a breach of the peace it is his duty to prevent that action (d).

It is his general duty to protect life and property (e), and the general function of controlling traffic on the roads is derived from this duty (f).

Although it is the duty of the police to obtain all possible information regarding crimes and offences which have been committed, they have in general no power to compel any person to disclose facts within his knowledge or to answer questions put to him (g).

(11) The Royal Commission on Criminal Procedure: The Investigation and Prosecution of Criminal Offences in England and Wales, 1981 §p.1.

A. The Main Functions of the Police

1. The Royal Commission on the Police, in its Final Report in 1962, listed the main functions of the police as follows:

"First, the police have a duty to maintain law and order and to protect persons and property.

Secondly, they have a duty to prevent crime.

Thirdly, they are responsible for the detection of criminals and in the course of interrogating suspected persons they have a part to play in the early stages of the judicial process acting under judicial restraint.

Fourthly, the police in England and Wales (but not in Scotland) have the responsibility of deciding whether or not to prosecute persons suspected of criminal offences.

Fifthly, in England and Wales (but not in Scotland) the police themselves conduct many prosecutions for the less serious offences.

Sixthly, the police have the duty of controlling road traffic and advising local authorities on traffic questions.

Seventhly, the police carry out certain duties on behalf of Government Departments - for example, they conduct enquiries into applications made by persons who wish to be granted British nationality.

Eighthly, they have by long tradition a duty to befriend anyone who needs their help and they may at any time be called upon to cope with minor or major emergencies."

With respect to the relationship between the police and the executive branch of Government, the Royal Commission also stated at p.2:

B. The Constitutional Position of the Police

a. The status of the constable

3. In England and Wales the individual police officer holds the office of constable under the Crown. He is thus independent in that his legal status is not, strictly speaking, that of an employee. But he is subject to a code of discipline laid down in Regulations approved by Parliament and is supervised by his superior officers. Above all, he is subject to the law for the way he carries out his duties. The traditional view of policing arrangements stresses this independence and the integration of the police with the community they serve. The essence of it is to be found in the report of the Royal Commission on Police Powers and Procedure of 1929 (and approved by the Royal Commission of 1962):

"The police of this country have never been recognised, either in law or by tradition, as a force distinct from the general body of citizens. Despite the imposition of many extraneous duties on the police by legislation or administrative action, the principle remains that a policeman, in the view of the common law, is only 'a person paid to perform, as a matter of duty, acts which if he were so minded he might have done voluntarily'.

Indeed a policeman possesses few powers not enjoyed by the ordinary citizen, and public opinion, expressed in Parliament and elsewhere, has shown great jealousy of any attempts to give increased authority to the police."

4. This is too simple a view of the position now. The police officer is, as already noted, subject to a statutory scheme of control by his senior officers in addition to the general criminal and civil law. He does have greater legal powers than the ordinary citizen, as will become clear from the later parts of this volume, and he is a member of a large, disciplined and technologically advanced service, with all the resources and authority that brings. (emphasis added)

Prior to the decision of the Quebec Court of Appeal in the Keable case infra, the available judicial authority in Canada and England supported this statement by the Royal Commission.

In Re Ombusman for Saskathcewan [1974] 46 D.L.R. (3d) 452, which involved the Saskatchewan Division of the R.C.M. Police, Mr. Justice Bayda, who was then a judge of the Queen's Bench, said at p.454-5:

"It is settled by such cases as McCleave v. City of Moncton [1902], 32 S.C.R. 106, 6 C.C.C. 219; Roy v. City of Thetford Mines et al., [1954] S.C.R. 395; Bruton v. Regina City Policeman's Association [1945] 3 D.L.R. 437, [1945] 2 W.W.R. 237 at p.296 (Sask. C. of A.): and A.-G. for New South Wales v. Perpetual Trustee Co. Ltd. et al., [1955] A.C. 457, that a police officer's authority is original, not delegated and is exercised at his own discretion by virtue of his office; he is a ministerial officer exercising statutory rights. He is not, strictly speaking, a 'servant' but a holder of public office. He should therefore not be regarded as a 'servant of the Crown' but as a 'public officer of the Crown'."

In Perpetual Trustee Viscount Simonds said at pp.489-90:

"...there is a fundamental difference between the domestic relation of servant and master and that of the holder of a public office and the State which he is said to serve. The constable falls within the latter category. His authority is original, not delegated, and is exercised at his own discretion by virtue of his office: he is a ministerial officer exercising statutory rights independently of contract. The essential difference is recognized in the fact that his relationship to the Government is not in ordinary parlance described as that of servant and master."

In Conway v. Rimmer [1968] A.C. 910 Lord Reid said at p.953:

"The position of the police is peculiar. They are not servants of the Crown and they do not take orders from the Government."

However, these authorities must be considered together with Re Bisailion and Keable et al [1982] 62 C.C.C. (2d) 340 where Turgeon, J.A. said at pp.349-50:

"As guardian of public order, the Attorney-General is responsible for the conduct of criminal prosecutions. He is given administrative power over the Quebec Provincial Police, powers of supervision over the application of all statutes involving police, especially with respect to the Montreal Urban Community Police Department. An examination of numerous provisions of the Police Act, R.S.Q. 1977, c. P-13, shows clearly the primary role accorded to the executive in our police system. The Quebec Provincial Police, under the authority of the Attorney-General are charged with maintaining peace, order and public safety in the entire territory of Quebec, preventing crime and infringements of laws of Quebec, and seeking out the offenders (s.39[am. 1979, c.67, s.19]). The powers which the law accords to the Attorney-General are in keeping with the spirit of this institution in Canada; as the guardian of public order, the Attorney-General is responsible for functions which might be otherwise allocated in England.

Therefore, the contention that the peace officer has an independent position with respect to the executive power, an argument based upon English jurisprudence which is relied upon by the appellant, is not in accordance with our law."

The Keable case was appealed to the Supreme Court of Canada. Argument was heard on the 3rd and 4th of March, 1982. Judgement is still reserved.

On this question members of the Committee were not unanimous.

It is the view of the Province of Alberta that the true constitution position of police in Canada is more correctly expressed in the decision of Quebec Court of Appeal previously cited. Support in this proposition can also be found in the decision of the Supreme Court of Canada in Di Iorio and Fontaine vs. Warden of Common Jail of Montreal and Brunet et al, 35 C.R.N.S. 57,

where Dickson, J. stated at pp.79-80 as follows:

"Both the federal and provincial governments have accepted for over a century the status of the provincial governments to administer criminal justice within their respective boundaries. The provincial mandate in that field has consistently been recognized as part and parcel of the responsibility of a provincial government for public order within the province.

Under s.92(14) of our constitution, as I understand it, law enforcement is primarily the responsibility of the province and in all provinces the Attorney General is the chief law enforcement officer of the Crown. He has broad responsibilities for most aspects of the administration of justice. Among these within the field of criminal justice are the court system, the police, criminal investigation and prosecutions, and corrections. The provincial police are answerable only to the Attorney General as are the provincial Crown attorneys who conduct the great majority of criminal prosecutions in Canada."

Other authorities cited, while perhaps of historical significance, reflect, in part at least, the views in the United Kingdom and are thus not particularly relevant or applicable to the situation of Canada.

3. The Waterfield Principle - Part 1

In *R. v. Waterfield* [1964] 1QB 164, (1963) 48 CAR 42, [1963] 3 ALL E.R. 659, the English Court of Criminal Appeal recognized that courts historically have declined to define, exhaustively, the duties, responsibilities, powers and privileges of a constable. At page 47 the Court stated:

"In such reported cases as have involved consideration of a police constable's duties, the courts have referred to those duties in general terms and have not attempted to lay down by way of definition the scope or extent of those duties. Thus in *Betts v. Stevens* [1910] 1 K.B. 1 Bucknill J. said at p.9:

'The first question we have to ask ourselves is what was the duty which was being executed by the police officer Pyke? It has been contended that it was not a duty within the section; that the word 'duty' in the section means some special duty which is laid by common law or by some statute upon constables as distinguished from other members of the community. I cannot accept that contention.' In *Glasbrook Bros. Ltd. v. Glamorgan County Council* [1925] A.C. 270 the Lord Chancellor, Lord Cave, said at p.277:

'No doubt there is an absolute and unconditional obligation binding the police authorities to take all steps which appear to them to be necessary for keeping the peace, for preventing crime and for protecting property from criminal injury.' And, with particular reference to the obtaining of evidence, Wright J. said in *Lushington* [1894] 1 Q.B. 420, at p.423: 'In this country I take it that it is undoubted law that it is within the power of, and is the duty of, constables to retain for use in court things which may be evidences of crime, and which have come into the possession of the constables without wrong on their part.'

In the judgment of this court it would be difficult, and in the present case it is unnecessary, to reduce within specific limits the general terms in which the duties of police constables have been expressed.

(emphasis added)

The Court then went on to formulate a test to determine whether a constable was acting outside the law. This test is referred to and discussed below under the heading "The Waterfield Principle - Part 2".

4. The Waterfield Principle, Part 2

In Waterfield the Court formulated the following test at p.47:

"In the judgment of this court it would be difficult, and in the present case it is unnecessary, to reduce within specific limits the general terms in which the duties of police constables have been expressed. In most cases it is probably more convenient to consider what the police constable was actually doing and in particular whether such conduct was prima facie an unlawful interference with a person's liberty or property. If so, it is then relevant to consider whether (a) such conduct falls within the general scope of any duty imposed by statute or recognized at common law and (b) whether such conduct albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty.

Thus, while it is no doubt right to say in general terms that police constables have a duty to prevent crime and a duty when crime is committed, to bring the offender to justice, it is also clear from the decided cases that when the execution of these general duties involves interference with the person or property of a private person, the powers of constables are not unlimited".

5. Evolution of the Waterfield Principle

The principle in Waterfield has been consistently applied and approved not only in England but in Canada as well. However, as a starting point in examining the evolution of the Principle it is appropriate to take a closer look at the Waterfield case itself.

In Waterfield, supra, two police officers were keeping watch on a car which, according to information received, had been involved in a serious offence. Two men got in the car and attempted to remove it. In the course of preventing them from doing so, one constable was assaulted. At trial, each of the men was convicted of assaulting the constable in the execution of his duties. On appeal, the convictions were quashed because the constable had no power under the Road Traffic Act to detain the vehicle. In reaching this result however, the Court formulated the principle quoted above.

The actual result of the case was criticized by Lord Denning M.R. in Ghani v. Jones [1969] 3 ALL E.R. 1700 (C.A.). In Ghani v. Jones (supra) a police officer in the course of a murder investigation entered residential premises on the invitation of the plaintiff. The police officer asked questions pertaining to the offence and asked for and received certain personal documents from the plaintiffs. The police claimed a right to retain them because, in the event charges were laid, the documents would be of value as evidence. Lord Denning argued that it was the constable's duty to preserve evidence and that he had a common law power enabling him to do so. His Lordship stated at p.1704-05:

"The decision caused me some misgiving. I expect that the car bore traces of its impact with the brick wall. The police had reason to believe that Lynn and Waterfield were implicated in a crime of which the marks on the car might be most material evidence at the trial. If Lynn and Waterfield were allowed to drive the car away, they might very well remove or obliterate

all incriminating evidence. My comment on that case is this: the law should not allow wrongdoers to destroy evidence against them when it can be prevented. Test is by an instance put in argument. The robbers of a bank "borrow" a private car and use it in their raid, and escape. They abandon it by the roadside. The police find the car, i.e., the instrument of the crime, and want to examine it for fingerprints. The owner of the "borrowed" car comes up and demands the return of it. He says he will drive it away and not allow them to examine it. Cannot the police say to him: "Nay, you cannot have it until we have examined it"? I should have thought that they could. His conduct makes him look like an accessory after the fact, if not before it. At any rate it is quite unreasonable. Even though the raiders have not yet been caught, arrested or charged, nevertheless the police should be able to do whatever is necessary and reasonable to preserve the evidence of the crime. The Court of Criminal Appeal did not tell us how *R. v. Waterfield*, *R. v. Lynn* is to be distinguished from such a case. The court simply said that the police constables were under no duty "to prevent removal of the car in the circumstances". They did not tell us what were the "circumstances" which took it out of the general rule. They may have been sufficient. I do not know."

The Supreme Court of Canada has applied the test set out in Waterfield in R. v. Stenning [1970], 10 D.L.R. (3d) 224 and Knowlton v. The Queen [1973], 10 C.C.C. (2d) 377. In Stenning, a gunshot was heard near a commercial establishment and the investigating officers found someone outside the premises who appeared to have been beaten. The officers noticed someone moving around inside, knocked at the door after identifying themselves and, after hearing no response, entered. One officer encountered the accused, asked him his name and what he was doing and received the response that it was none of the officer's business. A physical confrontation took place when the officer prevented the accused from using the telephone. The Supreme Court held that the officer was acting in the execution of his duties as set out in the Police Act. Significantly,

Martland J.'s majority reasons also refer to a mere "technical trespass" having been committed by the officer, a notion which the McDonald Commission specifically rejected.

At p.228 Martland J. stated:

"We were referred to a number of English authorities and some Canadian cases, all of which turned upon facts which differed from the facts found in this case. Their effect is stated in the judgment of the Court of Criminal Appeal in R. v. Waterfield, [1964] 1 Q.B. 164 at p.170:

'In the judgment of this court it would be difficult, and in the present case it is unnecessary, to reduce within specific limits the general terms in which the duties of police constables have been expressed. In most cases it is probably more convenient to consider what the police constable was actually doing and in particular whether such conduct was prima facie an unlawful interference with a person's liberty or property. If so, it is then relevant to consider whether (a) such conduct falls within the general scope of any duty imposed by statute or recognise at common law and (b) whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty.'

On the facts of this case, as found by the trial Judge, whether Wilkinson was, technically, a trespasser, or not, he was engaged in the execution of his duties at the time when he was assaulted by the respondent, and at that time there had been no unlawful interference with either the liberty or the property of the respondent."

In Knowlton (supra) an officer assigned to a security detail during Premier Kosygin's visit to Edmonton was instructed to cordon off an area at the front of a hotel. Knowlton entered the cordoned area after being told not to do so. The Supreme Court affirmed his conviction under s.118(a) of the Code, applying the test set out in Waterfield and referring to the duties of officers as

Fauteaux, C.J.C. for the Court stated at pp.379-80:

"Police duty and the use of powers associated with such duty are the sole matters in issue in this appeal. The police having interfered with the liberty of the appellant, or more precisely, with his right to circulate freely on a public street, the questions to be determined are, as formulated by the Court of Criminal Appeals in R. v. Waterfield et al., [1964] 1 Q.B. 164 at p.170 et seq:

'...whether (a) such conduct (of the police) falls within the general scope of any duty imposed by statute or recognised at common law and (b) whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty.'

As to the first question: s.26(I) of the Police Act, 1971 (Alta.), c.85, assigns to a member of a municipal police force, within the limits of the municipality, all the powers and duties of a member of the provincial police force under Part I of the statute. Section 2(1) of Part I provides for the establishment of a provincial police force

2(1) For the preservation of peace, order and public safety, the enforcement of the law and the prevention of crime...

And s.3(1) of Part I states, in part, that:

3(1) Every member of the Alberta Provincial Police has the power and it shall be his duty to

(a) perform all duties that are assigned in relation to

- (i) the preservation of peace,
- (ii) the prevention of crime and offences against the laws in force in Alberta, and
- (iii) the apprehension of criminals and offenders and others who may lawfully be taken into custody.

It is notorious and of common knowledge that the official visit of the head of state or high rank dignitary of a foreign country, friendly as either may be, is an event that frequently engenders a real or apprehended threat to the preservation of peace and that calls, therefore, for the adoption of proper and reasonable security measures in and by the host country. Demonstration of this assertion can hardly be here more to the point than by merely referring to the criminal assault actually committed on the person of Premier Kosygin, in the City of Ottawa, a few days only before his visit to the City of Edmonton. This assault was instantly publicized throughout Canada and was, indeed, while being committed, witnessed on television by a very great number of persons in the country including, admittedly, the appellant himself. From these facts, it is only natural to draw the inference that Canadian officials specially involved in the preservation and maintenance of peace, order, public safety and of the security of our visiting dignitary, gained immediate knowledge of this event of regrettable import.

According to the principles which, for the preservation of peace and prevention of crime, underlie the provisions of s.30, amongst others, of the Criminal Code, these official authorities were not only entitled but in duty bound, as peace officers, to prevent a renewal of a like criminal assault on the person of Premier Kosygin during his official visit in Canada. In this respect, they had a specific and binding obligation to take proper and reasonable steps. The restriction of the right of free access of the public to public streets, at the strategic point mentioned above, was one of the steps -- not an unusual one -- which police authorities considered and adopted as necessary for the attainment of the purpose aforesaid. In my opinion, such conduct of the police was clearly falling within the general scope of the duties imposed upon them."

The majority reasons in Stenning were applied by the British Columbia Court of Appeal in Tunbridge v. The Queen [1977] 4 W.W.R. 77 where two officers were called to the scene of a domestic dispute by a woman whose husband was drunk. The woman announced she was leaving and the officers were of the opinion that it was in the interests of the two young children to accompany their mother. Earlier,

the accused had struck his wife. There was no apprehension of danger to the children but one child's head had been, inadvertently, held against a window pane by the accused. As the officers were taking the children out of the premises, the accused assaulted one of the officers. The British Columbia Court of Appeal referred to the Waterfield test but held that in the absence of reasonable apprehension of injury to the child or a further breach of peace, the officers' action in removing the children from the premises was unjustified. We find the result in this case rather difficult to understand.

The Stenning case was also applied in R. ex rel Crewson v. Alexandre, [1974] 4 W.W.R. 315. A police officer observed a car fishtailing and proceeding to stop it. It was argued that by announcing an intention to lay a charge which may have been inappropriate in the circumstances, the officer was acting outside of his duties. On a summary conviction appeal, Cormack, D.C.J. affirmed the accused's conviction, citing Stenning and Waterfield. His Honour stated at pp.319-20:

"In support of the first contention appellant's counsel suggests that 'upon even the most naive interpretation of the facts and the law' there could not be any possible indication that the appellant was stunting. Without adjudicating upon that question it should be noted that the stunting section of The Highway Traffic Act speaks of stunting or 'other activity ... likely to distract, startle or interfere with other users of the highway'. I do not agree with counsel that the constable's appraisal of the actions of the appellant was naive. He had witnessed a fishtailing car coming up the main street of the town. It did some fishtailing and with the constable squarely in the centre of the headlights it came to a stop six inches from him. The constable felt it necessary to tell the driver to 'act serious' as he was talking to him. Whether or not the conduct was stunting or comprised the 'other activity' provided for in the Act is unimportant.

The constable is not required to analyze each offence and carefully and scrupulously charge the accused with the proper one. It is sufficient if he places upon the facts a reasonable interpretation sufficient to warrant a charge. In this he is acting within the scope and ambit of his duty. If, however, he attempts or effects an arrest so as to interfere with the liberty of the subject or if he attempts to or does deprive the subject of his property then he may have gone outside such scope and ambit, whereupon it becomes necessary to consider where his duty originated as suggested in *Regina v. Waterfield*, supra.

Merely writing a traffic ticket is not, in my opinion, interfering with the liberty of the subject or depriving him of his property."

In *R. v. August, Stirrett and Hundal* [1974] 17 CCC 2d 194, BCCo.Ct., the accused were arrested as persons "found committing" a summary conviction offence of causing disturbance. They were acquitted but Trainor DCJ stated at p.197:

"The activities of the respondents had the effect of building a feeling of annoyance and resentment which probably would have caused a disturbance. In those circumstances the officers were under a duty to take all steps reasonably necessary to keep the peace, prevent crime and protect property. To walk away from the developing situation at the corner would have been an abdication of duty."

Trainor DCJ also referred to the reliance by Maitland J. in *Stenning on Waterfield* as "The basis for consideration of the duty of a peace officer in each particular case...."

In *R. v. Brown* [1975] 23 CCC 2d 513 SCC, the Supreme Court of Canada considered whether the respondent had resisted a police officer in the execution of his duty. The majority per Martland J. determined that he was acting within s.54 of the Police Act 1968 (Que) c.17 and therefore

was in the execution of his duty and was "justified" in receiving a prisoner into his custody even though the original arrest may not have been lawful.

In R. v. Landry, [1981] 63 CCC 2d (Ont CA) a police officer received information from a citizen who had observed two individuals apparently attempting to steal cars. The officer saw two people matching the description he had received, entered the doorway of the basement apartment where he had seen them, and proceeded to ask them questions pertaining to the offence. On receiving no response to his questions, he attempted to arrest them for the attempted theft. The officer then entered the room and stood close to the accused. When he tried to gain physical control over the accused, the officer was assaulted. The majority of the Court (Houlden and Thorson, JJ.A.) dismissed the Crown's appeal against acquittal on a charge under s.246(2)(a). Jessup J.A., who would have allowed the appeal, held that the officer was not a trespasser by virtue of his right to effect the arrest and therefore he was acting in the execution of his duties at the time of the assault. Following cases, such as Stenning, Jessup J.A. stated at p.298:

"(B)y reason of his right of entry to arrest MacLaren, the officer was not a trespasser on the premises because he could not be both a trespasser and a lawful entrant and his de jure right of entry cannot be dependent on his lack of knowledge that MacLaren did not live there."

This case is currently on appeal to the Supreme Court of Canada.

In R. v. Dedman [1981] 59 CCC 2d 97 (Ont. CA) Martin J.A. referred to the Waterfield test and ultimately decided that signalling an automobile driver to stop in order to ascertain whether that person had been drinking is not an unjustifiable interference with the liberty of the person. Martin J.A. concluded that an officer enforcing the RIDE programme was carrying out his general duties to prevent crime and to prevent injury to person or property, although there was no express power enabling him to signal vehicles to stop for the purposes stated above. This is in direct conflict with the McDonald Commission's view that police powers do not exist unless provided for by statute.

In the course of his judgment Martin J.A. referred to Donnelly v. Jackman [1970] 1 ALL E.R. 987 (C.A.). The facts in that case were as follows (at p.988):

"The facts found by the justices were these; at about 11.15 am on Saturday, 5th April, the appellant was lawfully walking along a pavement when PC Roy Grimmett in uniform came up to him for the purposes of making enquiries about an offence which the officer had cause to believe the appellant had committed or might have committed. The officer spoke to the appellant asking him if he could have a word with him. The appellant ignored that request, and continued to walk along the pavement away from the officer. The officer followed close behind him, and apparently repeatedly asked him to stop and speak to him. At one stage the officer tapped the appellant on the shoulder, and apparently shortly after that the appellant turned round and in turn tapped the officer on the chest saying 'Now we are even, copper'.

It became apparent to the officer, so the finding proceeds, that the appellant had no intention of stopping to speak to him. The officer then again touched the appellant on the shoulder with the intention of stopping him, whereupon the appellant then turned round and struck the officer with some force. The finding is that the officer did not touch the appellant for the purpose of making any formal arrest or charge, the appellant was arrested for assaulting the officer in the execution of his duty and taken to the police station. The justices convicted the appellant, finding the summons proved."

The Court of Appeal cited Waterfield and upheld the conviction for assault police in the execution of his duty. Talbot J. for the court stated at p.989:

"Turning to the facts of this matter, it is not very clear what precisely the justices meant or found when they said that the officer touched the appellant on the shoulder, but whatever it was that they really did mean, it seems clear to me that they must have felt that it was a minimal matter by the way in which they treated this matter and the result of the case. When one considers the problem: was this officer acting in the course of his duty, in my view one ought to bear in mind that it is not every trivial interference with a citizen's liberty that amounts to a course of conduct sufficient to take the officer of the course of his duties. In my judgment the facts that the justices found in this case do not justify the view that the officer was not acting in the execution of his duty when he went up to the appellant and wanted to speak to him. Therefore the assault was rightly found to be an assault on the officer whilst acting in the execution of his duties and I would dismiss this appeal."

(emphasis added)

In Johnson v. Phillips [1975] 2 ALL ER 682 a constable ordered a citizen to drive away from the scene of an emergency, a feat which would have required him to drive the wrong way on a one-way street. The driver refused and was subsequently charged with obstructing the officer in the execution of his duty. At trial he was convicted of this offence. On appeal to the Queen's Bench Division (Lord Widgery C.J., Milmo and Wien J.J.) his conviction was confirmed. The Court decided that the officer's command was justified in the circumstances in the following terms (at p.686):

"We will conclude from the facts of the case, viewed quite objectively, that the instruction given was reasonable and lawful and was given at a time when he was acting in the course of his duty. To decide otherwise would produce the startling result that the appellant was entitled to remain where he was and maybe prevent expected ambulances from reaching the scene altogether or compel them to enter Cannon Street from the wrong end or perhaps cause further obstruction to any other vehicles entering the street until the stationary ambulance drove off. We stress that we do not decide that a constable has powers, whenever he thinks right, to order traffic to reverse the wrong way along a one-way street. No general discretion is given to a constable, even in cases where he himself considers that an emergency has arisen, to disobey traffic regulations or to direct other persons to disobey them."

The Court went beyond Waterfield in one sense but qualified the power of the police in such a situation where the officer's action was for the purpose of protecting life or property. The Court stated:

"The powers and obligations of a constable under the common law have never been exhaustively defined and no attempt to do so has ever been made; see, for example, R. v. Waterfield where Ashworth J., who delivered the judgment of the court said;...'it would be difficult, and in the present case it is unnecessary, to reduce within specific limits the

general terms in which the duties of police constables have been expressed.' Also there is the case of Rice v. Connolly, where Lord Parker CJ said:

'It is also in my judgment clear that it is part of the obligations and duties of a police constable to take all steps which appear to him necessary for keeping the peace, for preventing crime or for protecting property from criminal injury. There is no exhaustive definition of the powers and obligations of the police, but they are at least those...'

In attempts to keep pace and to deal with the volume and complexity of road traffic the legislature has often made enactments to deal with certain problems. An example may be given by reference to s.22 of the Road Traffic Act 1972. s.22(1) so far as is relevant, reads as follows:

'Where a constable is for the time being engaged in the regulation of traffic in a road...a person driving or propelling a vehicle who -(a) neglects or refuses to stop the vehicle or to make it proceed in, or keep to, a particular line of traffic when directed so to do by the constable in the execution of his duty...shall be guilty of an offence.'

Such statutes cannot be considered as totally determining a constable's powers or obligations. One-way streets for vehicles are doubtless a comparatively modern method of coping with traffic congestion, but it cannot be said that Parliament either by statute or regulation has purported to deal with every situation that might conceivably arise.

The precise question that has to be answered in the instant case may be put thus: has a constable in purported exercise of his power to control traffic on a public road the right under common law to disobey a traffic regulation such as going the wrong way along a one-way street? If he himself has that right then it follows that he can oblige others to comply with his instructions to disobey such a regulation.

if, for example, a bomb had been planted in the Windsor public house and the exit from Cannon Street had in some way been blocked, could he lawfully reverse a police vehicle and oblige any other motorist then present in the road to reverse his own vehicle? The answer is, Yes, provided that in the execution of his duty he was acting to protect life or property: see Hoffman v. Thomas.

It is not clear from the justices' findings why the appellant, by stopping some 10 feet behind the ambulance, obstructed the removal of injured persons. We would have been assisted had we known the precise nature of the 'incident' that had occurred. That it was more than a trivial affair or minor public house brawl seems reasonably clear for two patients were being treated in the stationary ambulance and other ambulances were expected - doubtless to convey more injured persons to hospital. Other ambulances could hardly have been expected unless some instructions had been given to summon them to the scene. It can be said, therefore, that in the circumstances, so far as they are known, life was or might reasonably have been endangered. It is manifest that the constable was not acting capriciously or from personal motives. He was controlling traffic in a situation that could well be described as an emergency. Does the fact that he not only interfered with the appellant's liberty but instructed him to disobey a traffic regulation in any way alter the situation?

The law protects the liberty of the subject, but it must recognize that in certain circumstances which have to be carefully considered by the courts a constable may oblige persons to disobey a traffic regulation and not only in those cases that are explicitly dealt with by Parliament. In the judgment of this court a constable would be entitled, and indeed under a duty, to give such instruction if it were reasonably necessary for the protection of life or property. It is not necessary in

the instant case to decide whether there may not be other circumstances in which such an instruction might be justified. Each case must depend on its own facts. A constable's powers are not unlimited, as has been shown."

The Court's injection of the protection of life or property test into the Waterfield principle is troublesome. The authority cited for this proposition is Hoffman v. Thomas, [1974] 2 ALL E.R. 233, wherein the accused, although obeying a direction to stop at a traffic census point, declined to take part in the census and drove off. On appeal, his conviction for obstructing an officer engaged in the execution of his duty in the regulation of traffic was quashed. It was common ground that there was no statutory power to conduct a compulsory traffic census. The Court concluded that the constable had no common law duty to direct the vehicle to stop for the census because that action was not in relation to the protection of life or property. However, in that case the Court was dealing with the issue of whether or not a police officer had the power to stop vehicles at random for the purpose of a census. The Court in dealing with a motor vehicle issue seized on but a portion of a police officer's duties, i.e. controlling traffic. The Court stated:

"What then is the general duty of a police constable in these matters? In Halsbury's Laws of England there is this statement:

'The first duty of a constable is always to prevent the commission of a crime. If a constable reasonably apprehends that the action of any person may result in a breach of the peace it is his duty to prevent that action. It is his general duty to protect life and property, and the general function of controlling traffic on the roads is derived from this duty.'

In the present instance there is nothing in the case which I can find to suggest that any life or property was endangered

at all. There is no reason why the proceedings which were being conducted should give rise to such a danger, and nothing in the facts found to indicate that there was in this case any such danger. So the conception that the police officer was acting in the protection of life and property seems to me not to be supported on the facts of this case, and although the right to regulate traffic must necessarily be a very wide one, as I have already indicated that right does stem from the general duty to protect life and property.

It is not a right to regulate traffic for the police officer's own personal motives or entertainment; it is fundamentally a right to regulate traffic because of the dangers to life and limb which unregulated traffic can present. Accordingly it seems to me that neither at common law, nor by any statutory provisions to which we have been referred, had this police officer any right to direct the appellant to leave the motorway and go into the census area.

This judgment has been much shortened, as has the argument, by the consensus of agreement that no such statutory right exists. I have come to the conclusion that when the police officer made this signal directing the appellant to leave the motorway and go into the census area, he made a signal which he had no power to make either at common law or by virtue of statute, and consequently it seems to me in my judgment that the giving of that signal cannot have been an act in the execution of his duty, and on that ground alone it seems to me that the appellant's argument is successful and should be sustained."

The insertion of the protection of life or property pre-condition emanates from the Hoffman case because in

that case the Court was concerned with the power to regulate traffic. It must be remembered however that the power to regulate traffic flows from but a part of a police officer's duties, i.e. to protect life and property. It is therefore submitted that the protection of life or property precondition is not applicable to powers and rights flowing from other duties or responsibilities.

6. The Global Approach Including Waterfield

The Waterfield Principle, as evolved, is a vital part of the ordinary law of the realm. When the police officer is acting in the course of a duty, the ordinary law of the realm, as applied to him, includes an aspect which does not apply to the ordinary citizen. This aspect imposes special duties and responsibilities on the police officer, and at the same time provides a reasonable yet effective means, within the Rule of Law, to discharge those duties and responsibilities.

The Supreme Court of Canada decision in Priestman v. Colangelo [1959], 124 CCC 1, best illustrates this principle. In that case the police fired at a stolen vehicle containing people believed by the police to have committed offences earlier. The car went out of control killing two innocent bystanders. The estate of the deceased brought an action against the police officer. In the 3:2 decision, the Court held that the evidence did not disclose a cause of action. Mr. Justice Locke for the majority made the following comments:

@ p.3 "It is to be remembered that the appellant Priestman and Constable Ainsworth, in attempting to effect the arrest of Smythson, were exercising powers conferred upon them by the Criminal Code and, at the same time, attempting to discharge a duty imposed upon them by the Police Act, R.S.O. 1950, c.279, s.45. That section, so far as it need be considered, reads: 'The members of police forces appointed under Part II shall be charged with the duty of preserving the peace, preventing robberies and other crimes and offences....and apprehending offenders.'

The officers were thus not merely performing an act permitted by these statutes but engaged in the performance of what was a duty imposed upon them, a fact which, in my view, has a vital bearing upon the question of the liability of Priestman."

@ p.4 "This does not, however, relieve those exercising such statutory powers of the duty to take reasonable care in exercising them. Lord Blackburn points out in the passage above referred to that, though the Legislation has authorized the execution of the work, it does not thereby exempt those authorized to make them from the obligation to use reasonable care that in making them no unnecessary damage be done."

@ p.5 "There may, however, be duties imposed upon public officers and others for the protection of the public, the performance of which in many circumstances may involve risk of injury to third persons.

Actionable negligence has been defined is a variety of manners. In *Vaughan v. Taff Vale R. Co.* [1860], 5 H & N 679 at p.688, 157 E.R. 1351, Willes J. said that the definition of negligence is the absence of care according to the circumstances. The concluding words of this short definition are at times lost sight of and are those which must be kept most clearly in mind in considering an action such as the present, which is based on what is said to have been a negligent manner of discharging the duty which rested upon the constables."

@ p.8 "The performance of the duty imposed upon police officers to arrest offenders who have committed a crime and are fleeing to avoid arrest may, at times and of necessity, involve risk of injury to other members of the community. Such risk, in the absence of a negligent or unreasonable exercise of such duty, is imposed by the statute and any resulting damage is, in my opinion, *damnum sine injuria*. In the article in the last edition of Broom's Legal Maxims p.1, dealing with the maxim *salus populi est suprema lex* where the passage from the judgment of Buller J. in the British Cast Plate case is referred to, the learned author says: 'This phrase is based on the implied agreement of every member of society that his own individual welfare shall, in cases of necessity, yield to that of the community; and that his property, liberty, and life shall, under certain circumstances, be placed in jeopardy or even sacrificed for the public good.'"

@ p.9 "The answer to a claim in any of these suppositious cases would be that the act was done in a reasonable attempt by the officer to perform the duty imposed upon him by the Police Act and the Criminal Code, which would be a complete defence, in my opinion. As contrasted with cases such as these, if an escaping criminal ran into a crowd of people and was obscured from the view of a pursuing police officer, it could not be suggested that it would be permissible for the latter to fire through the crowd in the hope of stopping the fleeing criminal.

The difficulty is not in determining the principle of law that is applicable but in applying it in circumstances such as these."

3 p.12 "The powers exercised by the constable are, in the sense, of a similar nature to powers of the nature referred to by Lord Greene in the passage from Fisher's case, [1945] 1 K.B. 584. If the circumstances are such that the Legislature must have contemplated that the exercise of a statutory power and the discharge of a statutory duty might interfere with private rights and the person to whom the power is given and upon whom the duty is imposed acts reasonably, such interference will not give rise to an action.

In my opinion, the action of the appellant in the present matter was reasonably necessary in the circumstances and no more than was reasonably necessary, both to prevent the escape and to protect those persons whose safety might have been endangered if the escaping car reached the intersection with Pape Ave."

In our view the majority of the Supreme Court of Canada, in Priestman, held that the ordinary law of the realm relevant to the civil liability of police officers included not only the general law of negligence but also Waterfield. The Supreme Court of Canada did not say that the general law of negligence was not applicable to police officers but rather that the total law of the realm relevant to their potential liability included not only the general law of negligence but also an additional aspect applicable only to police officers. As a result the actions of the police were not in conflict with the Rule of Law.

Before leaving this portion of the paper, it is important to restate the notion of police duties and the inability to exhaustively define them. The most concise statement of this principle, in our view, is found in the Supreme Court of Canada decision in Schacht v. O'Rourke [1976] 1 S.C.R. 53. In that case, in considering the duties

of the police, Spence J., for the majority, stated at p.15:

"Schroeder J.A. approached the problem with what I may, with respect, characterize as a forth-right and enlightened manner, when he said:

'Police forces exist in municipal, provincial, and federal jurisdictions to exercise powers designed to promote the order, safety, health, morals and general welfare of society. It is not only impossible but inadvisable to attempt to frame a definition which will set definite limits to the powers and duties of police officers appointed to carry out the powers of the state in relation to individuals who come within its jurisdiction and protection. The duties imposed on them by statute are by no means exhaustive. It is infinitely better that the courts should decide as each case arises whether having regard to the necessities of the case and the safeguards required in the public interest, the police are under a legal duty in the particular circumstances and then concluded after reference to certain cases, to the statutory provisions and to the evidence.

Looked upon superficially the passivity of these two officers in the face of the manifest dangers inherent in the adequately guarded depression across the highway may appear to be nothing more than non-feasance, but in the case of public servants subject not to a mere social obligation, but to what I feel bound to regard as a legal obligation, it was non-feasance amounting to mis-feasance. Traffic officers are subject to all the duties and responsibilities belonging to constables. The duties which I would lay upon them stem not only from the relevant statutes to which reference has been made, but from the common-law, which recognizes the existence of a broad conventional or customary duty in the established constabulary as an arm of the State to protect the life, limb and property of the subject."

C. Conclusions

- (a) The Rule of Law must at all times govern with the result that no peace officer is justified in breaking the law. It should be understood however that peace officers have responsibilities and commensurate authority not vested in persons who are not peace officers.
- (b) If the Rule of Law is applied in the proper way by examining the ordinary law of the realm in a global sense, the McDonald Commission's conception of the "inherent contradiction" is demonstrably in error.
- (c) As a starting point in the examination of that total body of law we must attempt to ascertain the duties, responsibilities, rights and privileges of a police officer.
- (d) "It is not only impossible but inadvisable to attempt to frame a definition which will set definite limits to the powers and duties of police officers." Schacht v. O'Rourke, supra applying the Waterfield Principle Part 1.
- (e) "It is infinitely better that the courts should decide as each case arises whether, having regard to the necessities of the case and the safeguards required in the public interest, the police are under a legal duty, in the particular circumstances." Schacht v. O'Rourke.
- (f) That in determining whether a police officer was acting lawfully or unlawfully in discharging a duty or responsibility imposed upon him the test in Waterfield should be applied.

(g) To apply the Waterfield test we must:

I. consider what the police officer was actually doing and in particular whether his conduct was prima facie an unlawful interference with a person's liberty or property.

II. if so, it is then relevant to consider whether

(A) such conduct falls within the general scope of any duty imposed by statute or recognized at common law;

and

(B) whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with that duty.

(h) In applying the Waterfield test to the particular police conduct in question, it should first be determined whether the conduct was prima facie or unlawful interference with a person's liberty or property (Waterfield I). If the conduct falls outside Waterfield I, that is the end of the matter and the conduct is lawful.

If the conduct falls within Waterfield I, it must then be determined whether it comes within Waterfield IIA. If it does not, then the conduct is probably unlawful.

If the conduct does come within Waterfield IIA, then it must be determined whether it also comes within Waterfield IIB. If it does, then it is probably unlawful. If, however, the conduct does not come within Waterfield IIB, it is lawful.

(i) The Waterfield test presupposes an "interference with a person's liberty or property" because the potential illegality in that case was such as to come within that terminology. Other police actions may not involve "interference with a person's liberty or property", e.g. false identification or registration procedures, but may nevertheless be prima facie breaches of statutory offences.

In Waterfield the Court stated at p.47:

"Thus, while it is no doubt right to say in general terms that police constables have a duty to prevent crime and a duty, when crime is committed, to bring the offender to justice, it is also clear from the decided cases that when the execution of these general duties involves interference with the person or property of a private person, the powers of constables are not unlimited."

In our view this paragraph is open to at least two interpretations. It may be suggesting that when the police activity does not involve any "interference with a person's liberty or property", the powers associated with the police officer's duty to prevent crime are not limited to the same extent. If that is so, in a case which does not involve "interference with a person's liberty or property", but does not involve a prima facie breach of a statutory offence (e.g. false hotel registration, or more importantly certain offences involving the administration of justice), all that the officer would have to show would be that he was carrying out his duty to prevent crime and was acting bona fide. On the other hand the Court may not have been directing its attention to this type of situation when it concentrated on the facts before it and therefore was not intending to suggest that the powers in such a case were limited only by (i) a very widely stated duty (e.g. prevent crime) and (ii) the officer's subjective view as to what was reasonable. We believe that the wiser course is to apply the Waterfield Principle Part II to both types of cases. We therefore suggest that where the police activity is prima facie a breach of a statutory offence (even though there is no prima facie unlawful interference with a person's liberty or property) that activity should be measured as in Steps IIA and B set out in paragraph (g) above.

- (j) Although the above-mentioned procedure will not always be able to pre-determine whether a police officer will be acting lawfully or not it can be applied with sufficient precision to enable Crown Law Officers to propose guidelines and advise the police in advanced of any activity.

PART III

1. ELECTRONIC SURVEILLANCE - THE DASS/DALIA ENTRY ISSUE

While the provisions of Part IV.I of the Criminal Code and s.16 of the Official Secrets Act provide for the lawful interception of private communications, questions were raised, even before the McDonald Commission Report, as to the existence of authority for the police to enter upon private property in order to install, maintain or remove interception devices. Such conduct is clearly essential and occurs frequently in order to carry out the judicial authorization to intercept. The obiter dictum of the Manitoba Court of Appeal in R. v. Dass [1979], 47 CCC (2d) 194, was perhaps the first judicial expression of this concern in Canada. Notwithstanding the Dass dictum most Attorneys General have taken the position that the necessary authority is found by implication in the authorization itself, relying in part, upon Dalia v. The United States, 441 U.S. 238, 47 U.S. Law Week 4423 [1979] which is referred to further below.

The McDonald Commission did not share the view that Dalia applied and consequently concluded that such offences, as trespass, mischief, break and enter, were being committed in the context of "surreptitious entry" for the purpose of installing, maintaining or removing an electronic device.

Indeed, the Commission went so far as to suggest that the use of relatively small amounts of electrical power supply within the subject premises would constitute theft or at least mischief, and proposed a specific recommendation (#266) to cover this activity. (See section 7 below).

The Commission made the following recommendation:

"265. WE RECOMMEND THAT section 178.13 of the Criminal Code be amended to permit peace officers executing authorizations under this section to take such steps as are reasonably necessary to enter premises or to remove property for the purpose of examining the premises or property prior to installing a device or for the purpose of installing, maintaining or removing an interception device, providing the judge issuing the authorization sets out in the authorization

- (a) the methods which may be used in executing it;
- (b) that there be nothing done that shall cause significant damage to the premises that remains unrepaired;
- (c) that there be no use of physical force or the threat of such force against any person."

We are mindful of the Resolution passed at the 1979 Uniform Law Conference:

5. Implications of the Dass Case

Whereas the Commissioners are of the view that s.25 of the Criminal Code and s.26 of the Interpretation Act constitute sufficient authority to make it clear for the purposes of Part IV.I of the Code that lawful authority to intercept includes authority to enter premises and install, repair, maintain and remove listening devices; and

Whereas the Commissioners also recognize that the Dass case has created sufficient doubt in this area to place the police in a position of uncertainty;

Be it resolved that Part IV.I of the Criminal Code be amended to provide that an authorization to intercept a private communication is deemed to include authorization to enter premises, and install, repair, maintain and remove listening devices, subject to any restriction imposed by the court under s.178.13(2)(d). Carried (20-6)

However, we have concluded that legislation is not necessary at this time. We find the McDonald Commission's conclusions to be unrealistic, overly technical, strained and, most importantly, simply in error because of the apparent failure of the Commission to give any consideration to the Waterfield test.

Since the Commission's Report there have been some developments in the Canadian courts.

In R. v. Lyons et al, BCCA, June 21, 1982, Hinkson J.A. stated at pp.13-16:

"In Goldman v. R. [1980] 13 C.R. (3d) 228, McIntyre J. said at p.250:

'I am in full agreement with Brook J.A. in his comments above quoted, and I agree with him that R. v. LeSarge, supra, is not authority for the proposition that the words "lawfully made" in s.178.16(1)(a) mean only an interception made by judicial authorization. S.178.11(1) makes it an indictable offence to intercept a private communication by means of the devices described, and in subs. (2) provides that subs.(1), which created the offence, will not apply to a person who has the consent, express or implied, of the originator of the private communication or of the person intended to receive it.

These decisions make it clear that intercepted private communications are admissible in evidence if the interception was pursuant to an authorization or alternatively with the consent of the originator of the private communication or of person intended to receive it. If one of those conditions is met s.178.16(1)(a) makes the interception admissible in evidence. In such event the general rule referred to by Martin J.A. in LeSarge, supra, is applicable, even where the police have committed a trespass to install a room monitoring device, and the evidence is admissible.

That conclusion was reached by the Manitoba Court of Appeal in R. v. Dass [1979] 4 W.W.R. 97. The court there considered a case involving surreptitious entry

by the police to install a monitoring device in a residence. Huband J.A., delivering the judgment of the court, said at p.115:

'The fact that there has been a trespass or some other civil or, indeed, criminal wrong in the planting of the device does not invalidate the authorization to intercept, and thus does not render the interception unlawful. The authorization granted by the court is an authorization to intercept private communications. How that authorization is carried out is not germane to the issue of the admissibility of the evidence flowing from the interception. If a trespass has been committed, then those who have committed the trespass will be answerable in some other criminal or civil form.'

Counsel for the appellants contended that the court in Dass had failed to give consideration to the fact that the placing of the wiretap device had constituted a continuing trespass as long as the device remained in the location where it had been placed by the police. Counsel relied upon the decision of Colet v. R. [1981] 19 C.R. (ed) 84. In that case, Ritchie J. delivered the judgment of the Court and said at p.90:

'It is true that the appellant's place of residence was nothing more than a shack or shelter, which no doubt was considered inappropriate by the city of Prince Rupert, but what is involved here is the longstanding right of a citizen of this country to the control and enjoyment of his own property, including the right to determine who shall and who shall not be permitted to invade it.'

He continued at p.92:

"As I have indicated, I am of opinion that any statutory provision authorizing police officers to invade the property of others without invitation or permission would be an encroachment on the common law rights of the property owner, and in case of any ambiguity would be subject to a strict construction in favour of the common law rights of the owner. This is made plain from the following excerpt from Maxwell on Interpretation of Statutes, 12th ed. [1969], pp.251-52, where it is said:

'Statutes which encroach on the rights of the subject, whether as regards

person or property, are subject to a strict construction in the same way as penal Acts. It is a recognized rule that they should be interpreted, if possible, so as to respect such rights, and if there is any ambiguity the construction which is in favour of the individual should be adopted.'

Upon the basis of that decision the appellants contended that there was no right pursuant to the authorization to enter the premises at 1207 Nanton Avenue to install the room monitoring device.

In my opinion it is clear that the rights granted under Part IV.I of the Code is that stated by McIntyre J. in the Goldman case. That part of the Code regulates the breach of the right to not have private communications intercepted by the police.

When in the course of doing so the police commit acts which amount to wrongful acts, such acts may give rise to civil or criminal proceedings against them. But such acts do not vitiate the court order authorizing the intercept. Therefore the evidence is admissible pursuant to s.178.16(1) of the Code. I would not accede to this ground of appeal."

In a case styled as "In the Matter of An Application for An Authorization to Intercept Private Communications Made Pursuant to s.178.12(1) of the Criminal Code, McDonald J., of the Alberta Court of Queen's Bench released written reasons for Judgment September 24, 1982 with respect to his decision granted an authorization to intercept private communications. The authorization included the following:

"Provided that this authorization shall not be construed as authorizing the entry into a dwelling unit (that is not hotel or motel) for the purpose of installing or removing any electromagnetic or other device without the consent of any occupant thereof, but where the dwelling unit is a room in a hotel or motel the consent of the manager or security officer thereof shall be sufficient;"

McDonald J. went on to quote liberally from his findings as Commissioner in the McDonald Commission Inquiry in support of his conclusion not only that an authorization to intercept did not impliedly authorize entry for the purpose of installation maintenance or removal but also that it was appropriate to include an addendum such as that quoted above whereby such entry was expressly prohibited.

The Lyons case is on its way to the Supreme Court of Canada and British Columbia is considering an intervention or at a minimum discussion with the Federal Government with respect to the precise position that the Attorney General of Canada will be taking on the Dass/Dalia issue. Your Committee was not confident that the Supreme Court of Canada would be in a position to settle the issue, especially having regard to the fact that the relevant part of the Judgment of the British Columbia Court of Appeal was, as in Dass, obiter.

The application for an authorization in the case which gave rise to the Judgment of McDonald J. was made by both the Attorney General for Alberta and the Attorney General for Canada. Notwithstanding the suggestion by McDonald J. that his decision was one which could be clarified on appeal, it is our view that there is no right of appeal by the Crown from the decision of McDonald J..

However, Alberta has referred the following questions to the Alberta Court of Appeal by Order-in-Council #84/83 dated February 2, 1983:

1. "Does an authorization given by a judge under Part IV.I of the Criminal Code (Canada), by necessary implication, authorize any person acting under the authorization to enter any place at which private communications are proposed to be intercepted under the authorization for the purpose of installing, monitoring, repairing or removing any electromagnetic, acoustic, mechanical or other device?

2. Does a judge have jurisdiction, in giving an authorization under Part IV.I of the Criminal Code (Canada), to expressly authorize any person acting under the authorization to enter any place at which private communications are proposed to be intercepted under the authorization for the purpose of installing, monitoring, repairing or removing any electromagnetic, accoustic, mechanical or other device?"

In The Queen v. Glesby, et al, (Man. Co. Ct.)

July 19, 1982, Krindle Co.Ct.J. stated at p.6:

"To briefly recap the facts, on June the 4th 1980, the police covertly entered 60 Paramount Road, the business premises of Cando, to place a roombug in 60 Paramount Road. On June 10th of '80, they re-entered, changed the transmitter to a different frequency, and on June the 15th of '80 re-entered and removed the transmitter. On June the 5th of '80 the police entered 171 Higgins Avenue, the premises of Glesby Cartage and Trucking, and placed a drone in the office. On June the 6th they re-entered and placed a Vega transmitter in the building. On July the 3rd they re-entered and changed the batteries on the transmitter. On September the 15th of '80 the bugs were removed. Problems in finding a power source for the transmitter on June the 5th of '80 necessitated the re-attendance with a battery pack for the Vega on June the 6th. On June the 23rd of 1980, the police entered 1029 McPhillips and installed a transmitter at 1029 McPhillips being the new business premises of Cando. On July the 7th they re-attended and installed a different transmitter; July the 26th, they removed the transmitter and battery pack. July the 9th of 1980, coupled with a search warrant and in daylight hours, they attended at the residence of Roy Glesby and installed two devices: a drone upstairs, a transmitter downstairs. These were removed on September 17th of 1980. Each and every one of those entries was effected, to use the American word, 'covertly'; to use the Canadian word, 'surreptitiously'. Each and every one of those entries was also effected in an extremely skilful manner, quickly and with an obvious minimum of damage. Whatever was moved was restored to the point where no one was aware that anything had been touched. The skill of the officers in effecting the covert entries is a bit

mindboggling. However, when the dust settles, what is before me is the issue of a covert entry, and not how well it was or was not done; and whether they bungled it and took twenty minutes to do it, or whether they did it efficiently in thirty seconds, the issue is still the covert entry itself. The authorization, Exhibit 4, to which these entries were purportedly made contains the following items of note: Firstly, it specifies that oral communications may be intercepted as well as telecommunications. Secondly, it describes in Paragraph 4 as a place at which private communications may be intercepted the following: 1. a dwelling at 224 McAdam, 2. a business at 171 Higgins, 3. a business at Cando Sportswear Limited 60 Paramount Road in Winnipeg, 4. and any place to which the named individuals use or are present at, which would cover the move of Kaye and Diamond from 60 Paramount Road to 1029 McPhillips.

Paragraph 6 of Exhibit 4 states: 'The persons hereby authorized to intercept private communications may enter any of the premises referred to in Paragraph 4 for the purpose of installing, monitoring and removing any electromagnetic, accoustic, mechanical or other device as may be required to implement this authorization.' The Order itself was made on May the 29th of 1980; it expired at 3:59 p.m. on July the 27th of 1980. Each of the entries with the exception of the entries to remove the devices at Glesby Cartage and at the Glesby residence was made within the time limits prescribed in Exhibit 4. With respect to the Glesby removals, there is some evidence before me brought out on cross-examination by Mr. Prober, with respect to a further authorization concerning an unrelated matter which did not expire until late September. I am not prepared to attach any significance to the date of the removal of the Glesby bugs. I certainly would not allow in any conversation after the expiry date of Exhibit 4 simply on Sergeant Patrick's say so that there was another authorization that I have never seen. At the same time, I am not going to infer criminality or lack of an order having regard to his testimony.

The Order authorizes entry, Exhibit 4. It does not particularize the nature of the entry. I have read Justice Huband's obiter in Dass. I have read Justice Scollin's comments on the matter of the entry clause in Exhibit 4. In my opinion, whether or not the order expressly authorizes a covert or surreptitious entry, whether or not the Court is even in power to authorize a covert or surreptitious entry, is irrelevant.

Implicit in stating to the authorities that they may bug an oral conversation is the fact that they may do the things reasonably necessary to implant that bug. The search and seizure cases are interesting so far as they go; that is, the Canadian search and seizure cases. But while in a search of a private premises, ordinarily an announcement does not effect the efficacy of the search or seizure, to suggest that the police must announce to occupants their intention to bug in advance of placing a bug is preposterous. It would completely preclude the very thing that the interception is intended to do - namely, to gain evidence.

In this connection I have reviewed the American law. It is noteworthy that their constitution is far more precise than ours when it comes to the whole question of property rights. Notwithstanding the specificity of their Constitution in terms of property rights, in the case of Dalia and The United States, which is reported at 47 U.S. Law Week, 4423, a 1979 decision in which Judge Powell, speaking for the majority held as follows: 'It is unnecessary for a wiretap order to specifically authorize covert entry as a means of implementation.' At page 4428 His Honour states:

'More important, we would promote empty formalism were we to require magistrates to make explicit what unquestionably is implicit in bugging authorizations; that a covert entry with its attendant interference with Fourth Amendment interests, may be necessary for the installation of surveillance equipment.' See U.A. and London... We conclude therefore that the Fourth Amendment does not require that a Title III electronic surveillance order include a specific authorization to enter covertly the premises described in the order.'

Also, in that same regard, I direct your attention to the case of The United States and Scaife, 564 F. 2d, 633 (2nd Cir. 1977) at pages 639 and 640, in which the circuit judge, Judge Moore states:

'But the most reasonable interpretation of the orders in this case granting authorization to bug private premises is that they implied approval for secret entry. Indeed, any order approving electronic surveillance of conversations to be overheard at a particular private place must, to be effective, carry its own authority to make such reasonable entry as may be necessary to effect the 'seizure' of the conversations.'

Further down on the page he states:

'And such placing (referring to a room bug) will have to be surreptitious for no self respecting police officer would openly seek permission from the person to be surveilled to install a bug to intercept his communications.'

The reasoning in the American cases makes perfectly good sense as far as I am concerned. I note that section 26(2) of the Canadian Interpretation Act is compatible with that line of reasoning. I find factually that the entries made, albeit surreptitiously, were limited in number and object; that the damage or disturbance caused was so minimal as to be unnoticed to the occupants, and that the entries within the heading of being covert were reasonable.

I find that regardless of what may have been intended by the wording in the Chief Justice's Order, Exhibit 4, there was implicit, if not explicit, authority contained in the permission to bug oral communications to authorize the covert entries, and neither the Code nor the unreasonable search and seizure provisions of the Charter were thereby offended.

I therefore find that 11(b) has been met, namely that the interceptions were carried out in the manner prescribed in the authorization."

As indicated above it is our view that the McDonald Commission is wrong in suggesting that legislation is necessary. Notwithstanding the recommendation of the Uniform Law Commission in 1979 (a decision in which several of us participated), we are not convinced that legislation is appropriate at the present time. It may well be that judicial interpretation of the Canadian Charter of Rights will suggest that legislation is appropriate at some future point. As indicated in Part I above we have considered five alternative approaches to each of the issues raised by the McDonald Commission Report. Our recommendation with respect to this issue is to proceed by way of guidelines by Attorneys General and the Solicitor General of Canada to their designated agents and advice by Crown Counsel to the police. We have considered a number of possible fact situations and set out below our recommended responses to those fact situations.

Possible Fact Situations

Advice to the Police

- | | |
|--|--|
| <p>1. The Judge indicates that in his view it is not necessary to include any express provision with respect to entry for the purpose of installation, maintenance or removal and that insofar as he is concerned the police can enter without any such express provision.</p> | <p>1. Enter for the purpose of installation, maintenance and/or removal.</p> |
| <p>2. The Judge indicates that in his view it is necessary to have an express provision in the authorization permitting the police to enter for the purpose of installation, maintenance or removal. Crown Counsel agrees and such a clause is contained in the authorization.</p> | <p>2. Enter for the purpose of installation, maintenance or removal.</p> |

Possible Fact SituationsAdvice to the Police

- | | |
|---|---|
| <p>4. The Judge indicates that in his view an express power to enter for the purpose of installation, maintenance or removal is required and he is not prepared to put such an express power in the authorization.</p> <p>5. The Judge indicates that an express provision is necessary, that he will not include it in the authorization and then goes on to specifically record, in the authorization, that the authorization to intercept does not include authority to enter (as per McDonald, J.).</p> <p>6. Emergency applications.</p> | <p>4. Do not enter.</p> <p>5. Do not enter.</p> <p>6. <u>NOTE: This part is relevant only in those jurisdictions where emergency authorization applications by the police permitted by the Attorney General.</u> If the response of the Judge is such as to bring the case within fact situations numbered 1, 2 or 3, enter for the purpose of installation, maintenance or removal. If the response of the Judge is such as to bring the case within fact situations numbered 4 or 5 do not enter.</p> |
|---|---|

This approach suggested in Fact Situations 1, 2 and 3 is consistent with the Waterfield test and a specific example of the application of particularly Step IIB in that test. The Dalia and Glesby decisions make it clear that the procedure suggested below will involve a justifiable use of the powers associated with the officer's statutory duty to carry out a judicial order.

In situations number 4 and 5 Crown Counsel will have to examine each fact situation and, pending the judgment of the Alberta Court of Appeal in the Reference, determine what course of action, if any, is available.

Each of the recommendations suggested above is based on the assumption that the applicant for the authorization will assess the particular fact situation and determine whether or not an entry will be necessary for the installation, maintenance or removal of an electronic device and where in his opinion such an entry will be required, he will draw that possibility/probability to the attention of the Judge orally during the application.

2. MOVING A MOTOR VEHICLE OR OTHER CHATTEL
FOR THE PURPOSE OF INSTALLING AN INTERCEPTION
DEVICE PURSUANT TO A PART IV.I AUTHORIZATION

In addition to the issues considered in s.1 above, s.295 of the Criminal Code is relevant here. It reads:

"295. Every one who, without the consent of the owner, takes a motor vehicle or vessel with intent to drive, use, navigate or operate it or cause it to be driven, used, navigated or operated is guilty of an offence punishable on summary conviction."

In our view the police should follow the guidelines proposed at pp.69-71 above with the result that so long as (a) the authorization on its face allows the use of a motor vehicle probe and (b) the need to move the vehicle is brought to the attention of the authorizing judge, and his response is such as to make it a category 1, 2 or 3 case, the police may move the vehicle for the purpose of installing the device and will not be committing an offence under s.295 of the Criminal Code, nor any other offence in doing so. The essence of the s.295 offence is "joy-riding" --an activity rather different from that carried out by a police officer acting under a Part IV.I authorization in a category 1, 2 or 3 case. More significantly, a proper application of the Waterfield principle indicates that although the activity is "prima facie an unlawful interference with property" (Step I), it is clearly within a duty imposed by statute (Step IIA) and is a justifiable use of the power associated with that duty (Step IIB).

With respect to the alleged applicability of the offence of theft we are satisfied that if the procedure suggested above is followed the mens rea required for theft is not disclosed (see p. 80 infra). An application of the Waterfield test discloses no liability at Step I of the test because the lack of mens rea demonstrates that there is no "prima facie unlawful (theft) interference with property".

In Eccles v. Bourque et al [1975] 19 CCC 2d 129 (SCC), police officers were sued civilly for damages for trespass, arising out of their forcible entry into the plaintiff's apartment in order to apprehend a person who they believed to be within the premises. The defendants relied upon s.25 and alternatively upon their rights of entry at common law. It was not disputed that had the officers found the person on the premises, they could have legally arrested him. Nor was it disputed that officers had reasonable and probable grounds to believe that he would be within the premises. It was argued on behalf of the defendant officers that under s.450 of the Code they would have been authorized to make the arrest and they were therefore authorized to make a trespass by virtue of s.25. The court rejected that submission and said:

"It is the submission of counsel for the respondents that a person who is by s.450 authorized to make an arrest is, by s.25, authorized by law to commit a trespass with or without force in the accomplishment of that arrest, provided he acts on reasonable and probable grounds. I cannot agree with this submission. S.25 does not have such amplitude. The section merely affords justification to a person for doing what he is required or authorized by law to do in the administration or enforcement of the law, if he acts on reasonable and probable grounds, and for using necessary force for that purpose. The question which must be answered in this case, then, is whether the respondents were required or authorized by law to commit a trespass; and not, as their counsel contends, whether they were required or authorized to make an arrest. If they were authorized by law to commit a trespass, the authority for it must be found in the common law for there is nothing in the Criminal Code."

The Court nevertheless found that the actions of the police were justified on established common law principles relating to the right to enter and search a dwelling house, - a result that is consistent with our conclusions in Part I above.

-4.

We question the applicability of the Supreme Court of Canada's reasoning in relation to s.25 of the Criminal Code to the issues raised in this section and in s.1 (pp.59-70) above. We take no issue with the proposition that when Parliament created the power to arrest (s.450 of the Code) it cannot be said to have impliedly authorized a trespass. At the time of the passage of s.450 Parliament was not directing its mind to a specific fact situation where "trespass" was necessary to carry out the duty to arrest. In a Part IV.I authorization where the need to "trespass" or move a vehicle without the owners consent has been brought to the attention of the authorizing judge, we are dealing with a very different situation.

We therefore recommend following the procedure set out in s.1 (pp.60-71) whenever it is necessary to move a vehicle or other chattel for the purpose of installing a device.

3. "SURREPTITIOUS ENTRY" WITHOUT WARRANT

We are not concerned here with search incidental to arrest, or other recognized (in Canadian Law) examples of the power of the police to enter without warrant. Rather we are concerned with the "need" of the police to enter surreptitiously without warrant, either as an investigative step in a specific criminal investigation, or for the purpose of gathering intelligence. We have been advised that the current policy of the R.C.M.P. is that which was enunciated in a directive from the Commissioner, at the start of the McDonald Commission proceedings, to the effect that there was to be no surreptitious entry without warrant either as a step in a specific criminal investigation or for gathering of intelligence. We have also been advised that the Commissioner has decided that he will continue to operate the R.C.M.P. under that directive until such time as he has a legislative basis for change.

We differentiate between the following two fact situations:

- (a) an entry which the police want to make as an investigative step in a specific criminal investigation for the purpose, for example, of observing or marking some goods for later tracing or photographing for subsequent use (of the photographs) as evidence. The police have no desire at the relevant point in time to seize any goods which they see in the premises and accordingly the existing provisions of the Criminal Code with respect to search and seizure are not appropriate.
- (b) an entry which the police want to make for the purpose of gathering information for criminal intelligence purposes unrelated to a specific investigation.

6.

We believe that an entry of the type referred to in (a) above can be a legitimate investigative step by the police, but is one in respect of which they ought to have prior judicial approval and appropriate legislation should be submitted to Parliament for this purpose.

We do not consider it appropriate to comment with respect to (b) either in relation to National Security Intelligence or Criminal Intelligence information pending further discussion of the Canadian Security Intelligence Act introduced by the Federal Government May 18, 1983.

4. CIVIL TRESPASS AND PROVINCIAL TRESPASS LEGISLATION

Provincial legislation in relation to trespass is as follows:

- (i) Newfoundland - Petty trespass applies only to lands which comprise the premises of commercial or educational areas, after notice not to trespass has been provided. Notice includes signs. (Petty Trespass Act, Statutes of Newfoundland 1975-76, c.59).
- (ii) P.E.I. - No relevant legislation.
- (iii) N.B. - No relevant legislation.
- (iv) N.S. - No relevant legislation.
- (v) Quebec - An offence to trespass on land without the permission of the owner (Agricultural Abuses Act, R.S.Q. C.A.-2 Division II). There is an exception for trespasses while "discharging any duty imposed by law".
- (vi) Ontario - An offence is not committed if the alleged trespasser is "acting under a right or authority conferred by law." (Petty Trespass Act, S. of Ontario. 1980 c.15).
- (vii) Manitoba - The offence is committed in the case of trespass upon lands or premises, if wholly enclosed, or upon which the person has been requested not to enter. (Petty Trespass Act Statutes of Manitoba c.P.50).
- (viii) Saskatchewan - No relevant legislation.
- (ix) Alberta - An offence to trespass on land, if one has notice by word of mouth or by Sign. (Petty Trespass Act Statutes of Alberta c.P-6)
- (x) B.C. - An offence to be found inside enclosed land without consent. Act seems to be directed at protecting agricultural lands. (Trespass Act R.S.B.C. 1979 c.411).

Copies of the legislation referred to attached is as Appendix D. We should, perhaps, add that apart from the legislation mentioned, it appears clear in Quebec that an action based on alleged trespass will only succeed when it can be established that material damage has been inflicted.

We have some concern about our ability to provide expert advice with respect to the Civil Liability of police officers in the context in which this question is discussed in the McDonald Commission Report. (Presumably no lawyer is competent to provide definitive advice absent a defined fact situation.) We believe, however, that our opinion with respect to the potential applicability of offence sections in Provincial Trespass Legislation may go at least part way in providing an answer with respect to the question of Civil Liability for Trespass.

As indicated in the position paper of the Provincial Attorneys General filed at the Federal/Provincial meeting of Attorneys General, November 23-25, 1981, the McDonald Commission appeared to disregard such sections as s.2 of the Trespass to Property Act, Ontario R.S.O, 1980, Chapter 511, which exempts persons "acting under a right or authority conferred by law" from the offence section.

We see no need for legislative change in this area and respectfully submit that the Waterfield principle which is explored at length in Part I above constitutes sufficient protection from prosecution for police officers in the manner described in Part I above.

5. THE OFFENCES OF (1) BREAK AND ENTER,
(2) THEFT, (3) MISCHIEF, (4) TRESPASS
AT NIGHT, (5) POSSESSION OF HOUSE-
BREAKING INSTRUMENTS AND (6) CONSPIRACY
TO COMMIT TRESPASS

We see no need for legislative action in this area. This section deals with a wide range of very important criminal offences and deserves very careful consideration. It occupied a substantial part of the voluminous McDonald Report. We are, of course, prepared to report further in greater detail but in the interest of keeping our report as succinct as possible consider it sufficient at the present time to confirm what was stated in the original report of your Interprovincial Committee (Appendix A). The McDonald Commission failed to properly consider the essential ingredients of the offences referred to. In particular they confused motive with intent and failed to recognize the need for affirmative proof of the requisite intent. We consider this sufficient at this time because we believe that the Commission's conclusions in this area are so significantly in error.

This is an area where each fact situation must be considered on its own merits and the Waterfield test applied. In each case it will be necessary to determine whether there is a "prima facie unlawful interference with a person's liberty or property" (Step 1) and if so whether the conduct "falls within the general scope of any duty imposed by statute or recognized at common law (Step IIA) and if so whether the conduct "involved an unjustifiable use of powers associated with that duty" (Step IIB).

6. SEARCHING FOR AND/OR SEIZING ARTICLES
 (NOT REFERRED TO IN A SEARCH WARRANT)
 WHEN THE POLICE OFFICER IS OTHERWISE
LAWFULLY ON THE PREMISES

By the phrase "lawfully on the premises" we refer to:

- (a) A 443 search;
- (b) A search incidental to arrest;
- (c) A Part IV.I entry;
- (d) Searches pursuant to other Federal statutes;
- (e) Searches pursuant to other search powers in the Criminal Code.

The position at common law is stated in Archbold's Criminal Pleading Evidence and Practice Fortieth Edition [1979] at p.916:

"Where the police enter a person's house by virtue of a warrant, or arrest a man lawfully, with or without a warrant it is settled law that the police are entitled to take any goods which they find in his possession or in his house which they reasonably believe to be material evidence in relation to the crime for which he is arrested or for which they enter. If in the course of their search they come on any other goods which show him to be implicated in some other crime, they may take them provided they act reasonably and detain them no longer than is necessary: see *Pringle v. Bremner and Stirling* [1867] 5 Macpherson's H.L. cas. 55, 60; *Chic Fashions (West Wales) Ltd v. Jones* [1968] 1 All E.R. 229 and *Garfinkel and Others vs. Metropolitan Police Commissioner* [1972] Crim. L.R. 44 (Ackner J.)"

In his opinion to the Federal Government in response to the McDonald Commission Report, Mr. Wright, of Lang, Michener, concludes that it can properly be argued that any warrant or authorization entitling a peace officer to be lawfully on premises carries with it the ancilliary power to take property which is evidence of the commission of crime even though that evidence may be unrelated to the purposes of the warrant. He points out

that in Chic Fashions, supra, Diplock L.J. said at p.237:

"the only relevance of the search warrant was that it made lawful the entry of the police and that the question was whether at common law a police officer, who was lawfully on private property, was entitled without the occupier's permission to seize and take away goods in the occupier's possession which he had reasonable grounds to believe were stolen and to detain them as material evidence."

In Re Paroian, Courey, Cohen & Houston and the Queen [1981] 29 O.R. (2d) 471 (C.A.) Morden, J.A., for the Court, said at p.482:

"No doubt, the intention of the provision (ss.231(4) Income Tax Act) is that the primary object of the authorized search will be to obtain evidence of the violation with respect to which there are reasonable and probable grounds, for the authorization will also permit the search for, and seizure of, evidence respecting other violations. With regard to such violations the legislation does not require the setting in motion of a fresh application for a new authorization - and so on from time to time. It may be that this particularly in an area that is confined to income tax offences, is not a significant departure from existing common law principles (Chic Fashions (West Wales) Ltd v. Jones, [1968] 2 Q.B. 299) or statutory provisions (Criminal Code, s.445) which allow, in certain circumstances, more things to be seized than those covered by the search warrant."

Insofar as s.443 of the Criminal Code searches are concerned, the common law position is codified by s.445 of the Criminal Code which provides:

"Every person who executes a warrant issued under section 443 may seize in addition to the things mentioned in the warrant, anything that on reasonable grounds he believes has been obtained by or has been used in the commission of an offence, and carry it before the justice who issued the warrant or some other justice for the same territorial division, to be dealt with in accordance with section 446."

(Emphasis added)

We see a need for legislation to rationalize s.445 and s.443(1) of the Criminal Code. The latter provides for the issuance of a search warrant in respect of three classes of articles whereas the wording of s.445 appears, at most, to cover two of those three classes. S.445 should be amended to cover all three of the classes of articles referred to in s.443.

In Ghani v. Jones, (supra), Lord Denning stated at p.1705:

"(W)e have to consider the interest of society at large in finding out wrongdoers and repressing crime. Honest citizens should help the police and not hinder them in their efforts to trace down criminals. Balancing these interests, I should have thought that, in order to justify the taking of an article, when no man has been arrested or charged, these requisites must be satisfied:

1. The police officers must have reasonable grounds for believing that a serious offence has been committed....
2. The police officers must have reasonable grounds for believing that the article in question is either the fruit of crime or is the instrument by which the crime was committed or is material evidence to prove the commission of the crime.
3. The police officers must have reasonable grounds to believe that the person in possession of it has himself committed the crime, or is implicated in it, or is accessory to it, or at any rate his refusal must be quite unreasonable.
4. The police must not keep the article, nor prevent its removal, for any longer than is reasonably necessary to complete their investigations or preserve it for evidence....

5. The lawfulness of the police conduct must be judged at the time, and not by what happens afterwards."

We see some scope here for possible legislative action with respect to the creation of a telephonic warrant power in those fact situations where the statutory or common law powers of the police do not currently justify seizure without warrant. For example if the original search warrant under s.443 is in respect of an alleged offence of theft or possession of stolen television sets, the warrant itself is ample authority to search those parts of premises which might conceal a television set or sets and possibly even those parts of a premises that might contain invoices or other documentary evidence of the theft or possession of television sets. The seizure of a restricted weapon observed by the police officer on a desk or table may be justified by s.445 or the common law in the premises being searched. The seizure of a restricted weapon found in a drawer opened by the police officer for the purpose of searching for and/or seizing documentary evidence of the possession of stolen television sets may similarly be justified.

However, the ability to rely on s.445 of the Criminal Code is restricted to those situations where the peace officer is lawfully on the premises pursuant to s.443 of the Criminal Code, and the ability of the peace officer to rely on the Plain View Doctrine is something which may not be clear as is appropriate for the purpose of advice in advance to police officers. We therefore recommend that any final determination as to the need for legislation in this area be postponed pending receipt and consideration of the recommendations of the Law Reform Commission of Canada in the Criminal Code Review process with respect to the powers of peace officers to search and/or seize particularly insofar as those recommendations may suggest the creation of a procedure whereby a telephonic warrant

uncertain as to his power to search for and/or seize additional articles. (We note that the Law Reform Commission is also looking at the possible use of telephonic warrants in fact situations where the police are not on the premises and do not have time to obtain a warrant in the usual way.)

7. ALLEGED POSSIBLE BREACHES OF OTHER
LEGISLATION (E.G. THEFT OF ELECTRICAL
POWER (s.287 OF THE CRIMINAL CODE) AND
BUILDING CODE BY-LAWS, ETC.)

We have considered the fact that in s.287 of the Criminal Code the word "or" is used whereas in s.283 the word "and" is used and have concluded that s.287(1)(a) of the Criminal Code should be read as intending the same interpretation as provided by s.283(1) of the Criminal Code.

Perhaps more importantly we have also concluded that the type of activity considered by the McDonald Commission as potentially illegal (the theft of electrical power contrary to s.287 of the Criminal Code by a peace officer installing interception device pursuant to a lawful authorization issued under Part IV.I of the Criminal Code) cannot by any sensible interpretation be considered to be "fraudulent or without colour of right", we therefore conclude that it does not really matter whether the word "or" was used in s.287 rather than the word "and".

In any event the conclusions reached by the McDonald Commission in this area are all answered by a proper application of the Waterfield principle with the result that no legislation is required nor are any new guidelines or directives to Crown Counsel or the police necessary.

8. DISCLOSURE OF INTERCEPTED PRIVATE
COMMUNICATIONS TO FOREIGN PEACE OFFICERS

Although s.178.2(2)(b) and (e) probably authorize such disclosure in any case where a Canadian peace officer, acting responsibly, wants to make such disclosure, it is not appropriate to attempt to issue any general guidelines or direction to the police other than to request the police to review each case with Crown counsel in advance in order to determine whether the above mentioned provisions of Part IV.I of the Code are applicable.

No legislative changes are required. The police should be advised to consult Crown counsel.

9. ALLEGED BREACH BY THE R.C.M.P. OF s.178.2
(NON-DISCLOSURE) IN REPORTING TO PROVINCIAL
ATTORNEYS GENERAL FOR PURPOSES OF THEIR
ANNUAL REPORTS TO THEIR LEGISLATURES

The offence under s.178.2(1) is with respect to "private communications" not with respect to "interceptions" or "authorizations". The reporting requirements under s.178.22 are with respect to the latter. There is accordingly no merit in the suggestion by the McDonald Commission that compliance with s.178.22 might amount to an offence under s.178.2. No action is therefore required.

10. INDEPENDENT REVIEW COMMITTEE

The McDonald Commission recommended the creation of a committee appointed jointly by Federal and Provincial Governments to review the exercise by peace officers of electronic surveillance powers (and certain other powers). The Commission recommended a committee consisting of "two judges, two lawyers and two citizens (one of whom might for example be a person active in a civil liberties organization)", which committee "could review the documents filed in support of applications for judicial authorization, the Orders themselves, the alternatives available to the police, the results of the investigative work to the extent that it was aided by the means authorized by the judicial authorization and so on".

We find this recommendation totally unacceptable. It amounts to a suggestion that a committee of persons appointed by the executive branch of government should review judicial decisions.

We note that the Law Reform Commission of Canada is studying the possibility of amending the precise wording of s.178.22 which deals with the duties of the Solicitor General of Canada and Provincial Attorneys General to report to Parliament and the legislatures respectively. We believe that there is a need to alter the precise wording of the statistics that are required in those reports.

11. MAIL CHECK

The McDonald Commission recommended that legislation be enacted to authorize R.C.M.P. officers to examine or photograph an envelope and to open mail in order to examine and test any substance found in the mail, only after judicial authorization subject to the same safeguards as are now found in Part IV.I of the Criminal Code and only in relation to narcotic and other drug offences.

We agree that legislation is required and agree that there should be prior judicial approval for access to mail including opening, seizing, returning or replacing contents and executing controlled delivery. We do not believe that such a procedure should be restricted to "narcotic and other drug offences" or that it should be available only to the R.C.M.P.

12. ACCESS BY THE POLICE TO CONFIDENTIAL INFORMATION

We note that the recently enacted Federal Access to Information and Privacy Legislation calls for a parliamentary committee to review all Federal legislation relevant to this question. Pending receipt of the report of that committee we believe that there should be a procedure by which the police can obtain access to most, if not all, confidential information kept by public or private agencies pursuant to federal or provincial legislation. We believe that there should be some pre-event authorization for the police. We do not believe that a procedure analagous to that contained in Part IV.I of the Criminal Code is necessary.

The majority of the committee favoured a procedure for pre-event authorization by a Provincial Court Judge on an ex parte application at least with respect to information maintained pursuant to Provincial Legislation. Because of the special situation involving the Income Tax Act, the Federal representatives on your committee were unable to express an opinion at this time.

13. PHYSICAL SURVEILLANCE

At the present time there are in existence a number of directives to police officers instructing them as to what they can do in the discharge of their duties insofar as Provincial Motor Vehicle and Highway Traffic Legislation is concerned. Such legislation varies from Province to Province but it is perhaps sufficient to say that with the possible exception of Quebec, New Brunswick and the Yukon Territories statutory exemptions and defences do not cover all legitimate police activity which may, superficially, appear to constitute a prima facie breach of a rule of the road. Physical surveillance by a police officer in a motor vehicle, for example, may, in the words of the Waterfield test, constitute a "prima facie unlawful interference with a person's liberty or property" or "a prima facie breach of a statutory offence" (see page 58 above) but on the basis of step 2 of the Waterfield test, be lawful activity.

The relevant Provincial Legislation is collected in Appendix D below. Particular reference should be made to the Quebec Highway Safety Code, the New Brunswick Police Act, and the Yukon Territories Motor Vehicle Ordinance.

The McDonald Commission recommended as follows:

"WE RECOMMEND THAT, in order to make it possible for physical surveillance operations to be carried out effectively by a security intelligence agency, changes be made in federal statutes and the co-operation of the provinces be sought to make changes in provincial statutes as follows:

(1) Rules of the road

- (a) A defence be included in provincial statutes governing rules of the road for peace officers and persons designated by the Attorney General of the Province on the advice of the Solicitor General of Canada ("designated individuals") if such persons act

- (ii) with due regard for the property and personal safety of others, and
 - (iii) in the otherwise lawful discharge of their duties;
- (b) a defence similar to that referred to in (1) (a) above be included in relevant provincial legislation which authorizes municipal traffic by-laws;
- (c) there be enacted by each of the provinces and territories, a provision for the protection of peace officers and designated individuals, saving them harmless from personal liability in civil suits, if such persons act
 - (i) reasonably in all the circumstances;
 - (ii) with due regard for the property and personal safety of others; and
 - (iii) in the otherwise lawful discharge of their duties;
- (d) the Government of Canada compensate those persons who, but for recommendation (c) above would be entitled to recover damages in a civil suit brought against a federally engaged peace officer or designated individual in a cause of action arising by reason of acts done or omissions occurring in the course of the work of such peace officer or designated individual and on the principle that the quantum of compensation should be assessed on the same basis as is the practice in the civil courts."

We have considered the following possibilities:

1. A blanket exemption for police such as is found in s.3(4) of the New Brunswick Police Act.
2. A statutory exemption from Rules of the Road prohibitions having regard to the spectrum of legitimate and necessary police activity on the highways.
3. An examination by each jurisdiction of its Rules of the Road legislation with a view to determining whether there is any amendment required so as to make that legislation consistent with a proper application of the Waterfield principle to the discharge by a police officer of his duties in circumstances where the Rules of the Road are relevant.

We have concluded that #1 is inappropriate. We believe that each jurisdiction should carefully consider approach #2 and adopt either that approach, or, in the alternative, approach #3.

14. FALSE IDENTIFICATION

With respect to Provincial Hotel Registration legislation the McDonald Commission recommended that such legislation should be amended to create a defence for a police officer acting in the execution of his duties. We recommend that there be an amendment but that it be of such a nature as to make it clear that it is no offence for a police officer to register under a false name rather than creating a defence for one who does.

With respect to such documentation as motor vehicle driver permits, motor vehicle registration permits, birth certificates, U.I.C., and S.I.N. cards, the McDonald Commission suggested that the creation, provision and use of such documentation with false identification constituted potential violations of the Criminal Code and the relevant provincial or federal legislation providing for the creation and issuance of such documentation.

We have considered the potential offences under the Criminal Code suggested to be relevant by the McDonald Commission and reject the applicability thereof. We agree however with the McDonald Commission in their suggestion that there may be contraventions of legislation authorizing the creation, issuance and use of such documentation. With respect to that legislation we considered the possibility of

- (a) legislation creating exemption;
- (b) legislation providing for pre-event judicial authorization;
- (c) legislation providing for pre-event ministerial approval.

We have concluded that ministerial approval is the appropriate safeguard. Further research is required as to the precise mechanism by which that approach can be accomplished. With respect to provincial legislation providing for the creation, issuance and use of such documentation, an amendment to the Police Act of the Province providing for ministerial approval granting exemption to the application of the requirements of the provincial legislation may be appropriate.

On the other hand such an amendment may not be necessary with respect to all relevant Provincial Legislation. For example, the creation and issuance of false or blank motor vehicle driver permits and the subsequent use thereof (with name engrossed if created and issued in blank) may not be even a prima facie breach of Provincial Legislation. In Ontario, such licences have been treated, issued, used and later returned on a Ministerial Approval basis. (See Appendix C below)

With respect to parallel federal legislation an amendment to the R.C.M.P. Act would not be sufficient because of the need for provincial and municipal police forces to similarly have access to documentation covered by federal legislation.

It would also appear prudent to do further research with respect to the question of the creation and use of documentation provided by the private sector (e.g. credit cards, union membership cards) at least insofar as potential civil liability is concerned.

15. OFFENCES OF FORGERY, FALSE PRETENSES,
IMPERSONATION AND INTIMIDATION

We see no need for legislation or administrative action with respect to the conclusions of the McDonald Commission in relation to these offences. Our conclusions are the same as those referred to in s.5 above.

16. INCOME OF POLICE OPERATIVES FOR TAX PURPOSES

We see no need for legislation with respect to this question. No policy directive is required at this time except to suggest that any law enforcement agency should consider consulting with the Federal Departments of National Revenue and Justice on a case by case basis.

17. THE USE AND ACTIVITIES OF UNDERCOVER OPERATIVES

There was general agreement among committee members that guidelines relating to the activities of undercover operatives should be developed for both police and Crown Counsel. It was noted, however, that the rigid application of the proscriptions in McDonald Commission recommendation 17 would virtually preclude using undercover operatives in certain criminal investigations. As a consequence, it was felt that guidelines in this area should be able to accommodate particularly unusual, extenuating, or exigent circumstances in specific cases.

The Federal Ministry of the Solicitor General will be developing, in consultation with the R.C.M.P. and Justice legal counsel, policy guidelines respecting the use of Confidential Sources and Undercover Operatives. The intention is to set out general principles and standards applicable to members of the Force, their agents, and sources.

Committee members recommend that the provinces cooperate among themselves and with the Federal Ministry of the Solicitor General in developing guidelines respecting the use and activities of undercover operatives.

18. THE OFFENCE OF BREACH OF TRUST
(CRIMINAL CODE s.111)

The McDonald Commission suggested that a police officer might be committing an offence under s.111 of the Criminal Code when exercising his discretion, as the potential informant, to refrain from laying a charge. This suggestion is a graphic example of the McDonald Commission's apparent lack of familiarity with the criminal law investigative and prosecutorial process. No legislative or administrative action is required with respect to this matter.

19. THE OFFENCE OF SECRET COMMISSIONS
(CRIMINAL CODE, s.383)

In suggesting that members of the R.C.M.P. might be committing offences under s.383 of the Criminal Code in making payments to informants, the Commission completely disregarded the word "corruptly" in s.383(1)(a) and made no reference whatsoever to the recent decision of the Supreme Court of Canada in the Palmer case which recognizes as necessary and proper the payment of monies to an informant under controlled circumstances. No legislative or administrative action is required with respect to this matter.

20. INTERROGATION PROCEDURES

The McDonald Commission recommended as follows at p.1115 of Second Report, Volume 2:

"280. WE RECOMMEND THAT the R.C.M.P. adopt the following policies concerning negotiation:

- (a) members of the Force have a duty to inform a person in custody, within a reasonable time after being taken into custody, of his right to retain counsel; and
- (b) members of the Force should provide reasonable means to a person in custody to communicate with his counsel without delay upon the person making a request to do so.

281. WE RECOMMEND THAT the R.C.M.P. revise training materials and programmes relating to interrogation to include proper instructions on the right of an accused to retain and communicate with counsel.

282. WE RECOMMEND THAT members of the R.C.M.P. be required to advise persons in custody reasonably soon after their arrest that arrangements exist to enable them to apply for counsel, such counsel to be paid for by the state if they cannot afford to pay counsel."

Subject to receipt and consideration of the work of the Law Reform Commission of Canada during the fundamental review of the Criminal Code process with respect to custodial interrogation, we believe that the law relating to the interrogations of suspects is adequately covered by the Charter of Rights and the existing case law. No legislative amendment or administrative action is required.

21. ENTRAPMENT

The McDonald Commission recommended at p.1116 of Second Report, Volume 2 as follows:

"284. WE RECOMMEND THAT the Criminal Code be amended to include a defence of entrapment embodying the following principle:

The accused should be acquitted if it is established that the conduct of a member or agent of a police force in instigating the crime has gone substantially beyond what is justifiable having regard to all the circumstances, including the nature of the crime, whether the accused had a pre-existing intent, and the nature and extent of the involvement of the police."

In light of the recent judgment of the Supreme Court of Canada in the Amato case we see no need for any legislative change in this area.

22. EXCLUSIONARY RULE

In light of the post McDonald Commission report enactment of s.24(2) of the Charter of Rights and the proposed s.22(2) of the Uniform Evidence Act (which is designed to be consistent with s.24(2) of the Charter of Rights) the conclusions and recommendations of the McDonald Commission are irrelevant with respect to this issue.

APPENDIX A

POSITION PAPER OF
PROVINCIAL ATTORNEYS GENERAL
WITH RESPECT TO ISSUES
ARISING OUT OF THE McDONALD COMMISSION REPORT

NOVEMBER 23-25, 1981

OTTAWA

A. The Responsibility and Accountability of Provincial Attorneys General for Law Enforcement and the Administration of Justice

1. All police forces including any security service agency are accountable to the Provincial Attorney General with respect to all aspects of their activities that relate to the administration of justice.

2. With respect to policing involving the enforcement of the Criminal Law, other Federal Statutes under which prosecutions are conducted by Provincial authorities, and Provincial Statutes, it is the duty of the R.C.M.P. to receive and follow policy direction from the Provincial Attorney General and to keep the Attorney General fully informed as to all its activities within his province.

3. With respect to the R.C.M.P. federal role in a province and/or the performance of the national security role by any other Federal agency, the Provincial Attorney General, while not as directly involved, is nevertheless responsible to ensure that the law is respected and followed in his jurisdiction. He must therefore have sufficient knowledge of the policy guidelines and operational activities of the force performing that federal function to be able to fulfil his responsibilities. It is the responsibility of the Federal Solicitor General to ensure that appropriate mechanisms are put in place to make certain that the Provincial Attorney General:

(a) is consulted in the drafting of policy guidelines, and

(b) is informed of operational activities in his province and any possible breach of the law by any member of the force operating in his province.

4. Neither the McDonald Commission Report nor recent statements from the Federal Government appear to fully recognize these principles.

3. The Substantive Law in Relation to Police Practices

1. General Approach:

Under our criminal justice system the interpretation and application of the law is ultimately the responsibility of the Courts. The determination of the law relevant to police practices however is something which must be made on a daily basis outside the courtroom in order to properly guide the police in the performance of their function. The responsibility to make those determinations lies with the Attorney General as part of his role as the person responsible for the administration of justice.

Neither the Solicitor General of Canada, nor the McDonald Commission nor any private lawyer has the mandate to make these determinations.

The McDonald Commission conducted its proceedings without any significant involvement by the Provincial Attorneys General to the factual information that was placed before the Commission. The Commission was thereby deprived of the assistance of provincial justice officials in this country whose collective experience in the determination of the law relevant to police powers would have been beneficial to the Commission.

After reviewing the Report, provincial justice officials find the Commission's conclusions with respect to the substantive law in relation to police practices to be substantially inconsistent with long-established and sensible principles that are applied in the administration of criminal justice. The Attorneys General agree with the underlying thesis of the McDonald Report that the police, like other citizens, are accountable to the rule of law and must therefore obey the law. In its delineation of the law however, the Commission fails to recognize a number of the practical realities of administering criminal justice and therefore arrives at erroneous conclusions.

2. Specific Examples:

(a) Administration of the Wiretap Legislation:

- (i) The Commission has misconstrued provincial legislation such as Provincial Telephone Acts and Trespass Acts by apparently disregarding notice and/or exemption sections in such statutes.
- (ii) The Commission has erred in favouring the reasoning in the Dass case over that in Dalia with respect to the question of whether the power to install and intercept includes an implied power to enter.
- (iii) The Commission's reliance on the case of Eccles v. Bourque by analogy is misguided. It is not appropriate to compare what was in the mind of Parliament at the time it passed s.450 of the Criminal Code with what is in the mind of a judge at the time he grants an authorization under s.178 of the Code.
- (iv) The Commission misinterprets s.25 of the Criminal Code by erroneously confining s.25(1) to the application of force in furtherance of carrying out an authorization.
- (v) The Commission erred in interpreting s.26(2) of the Interpretation Act by confining it to the ability of the judge to expand the terms of his order as opposed to the ability of the peace officer to act under that order.

(b) The Essential Elements of Certain Criminal Offences:

The Report minimizes the need for proof of criminal intent and appears to confuse:

- (i) a perceived lack of a positive lawful justification or excuse,
with

- (ii) affirmative proof of the requisite intent and even of the act itself.

The Commission also arrives at definite conclusions with respect to an alleged inability on the part of the police to distinguish between motive and intent while at the same time failing to draw that distinction themselves when arriving at their own conclusions.

(c) Provincial Statutory Offences:

Provincial justice officials question the accuracy and practicability of the Commission's conclusions with respect to (a) the essential elements of some provincial offences, (b) the available defences and exemptions, (c) the application of a police officer's discretion as the potential informant, and (d) the application of prosecutorial discretion. Most importantly, there is reason to question the Commission's failure to emphasize the need for a reasonable application of common sense and practical judgment in each of these steps.

The Attorneys General recognize a possible need for some legislative change provincially in order to ensure effective enforcement and compliance with the law by police officers in carrying out that enforcement function. However, the Attorneys question the Commission's conclusion as to how often provincial laws have been breached and accordingly question the extent to which provincial legislative change is necessary.

(d) Police Investigative Techniques:

In the area of police interrogation practices, for example, the Commission relies heavily on the Supreme Court of Canada decision in the Horvath case in coming to the conclusion that it is necessary to set up a comprehensive system for controlling

investigative techniques including the interrogation of suspects. The Commission's Report was made prior to the decision of the Supreme Court of Canada in the Rothman case which clarifies and in part supercedes what was said in the Horvath case. Provincial justice officials see no need to alter existing practices by way of a new comprehensive system for controlling such investigative techniques and rather prefer to rely on the traditional role of the Courts and the Attorney General in determining the propriety of investigative techniques.

3. Suggested Course of Action:

The Attorneys General recommend the formation of a committee of provincial and federal criminal justice officials to consider which, if any, of the following areas require legislation and/or the formulation of policy guidelines for the police:

- (a) Criminal Offences suggested by McDonald as relevant to police investigative activity.
- (b) Part IV.I of the Criminal Code.
- (c) Provincial Statutes suggested by McDonald as relevant to police investigative activity.
- (d) The Income Tax Act and other Federal Statutes and Provincial Statutes relating to the collection of information relevant to police investigations.
- (e) Section 25 of the Criminal Code and Section 26 of the Interpretation Act.
- (f) Police Investigative Techniques.

4. The Accountability of the National Security Agency to the Provincial Attorneys General

1. The Attorneys General wish to express their strong disapproval of the Federal Government's unilateral action

in accepting the McDonald Commission's recommendation to set up a separate civilian security agency without first consulting with the Provincial Attorneys General.

2. Acknowledging that the Federal Government has made the decision to have a separate civilian security agency and is currently engaged in the process of setting up that agency and determining its policies and procedures, the Attorneys General express their strong desire to participate in the determination of a number of issues in that process including:

- (i) The definition of national security including the identification of threats to the security of Canada.
- (ii) The accountability of the security agency to the Provincial Attorneys General as referred to in paragraph A.3 above.
- (iii) The working relationship between the security agency and police forces operating in the provinces.

APPENDIX B

DOCUMENT: 840-243/016

CONFIDENTIAL

FEDERAL-PROVINCIAL MEETINGS OF
DEPUTY MINISTERS OF JUSTICE

Progress Report to all Deputy Attorneys General
From the Federal/Provincial
Committee of Criminal Justice
Officials Dealing with the
Recommendations of the
McDonald Commission

Ontario

Ottawa (Ontario)
November 30 - December 2, 1982.

PROGRESS REPORT TO ALL DEPUTY ATTORNEYS GENERAL
AND DEPUTY SOLICITORS GENERAL
FROM THE FEDERAL/PROVINCIAL
COMMITTEE OF CRIMINAL JUSTICE
OFFICIALS DEALING WITH THE
RECOMMENDATIONS OF THE
MCDONALD COMMISSION
NOVEMBER 26, 1982

Introduction

Your Committee comprised of representatives from British Columbia, Alberta, Saskatchewan, Ontario and Canada has had three two-day meetings. A draft final report is currently being prepared and the Committee is scheduled to meet again during the week of February 7th, 1983 for consideration of that draft. A final report will hopefully be available shortly after that meeting.

Early in our deliberations we isolated 24 issues covered in the McDonald Commission Report and thereafter set about attempting to determine how the Federal and Provincial Governments ought to respond to the McDonald Commission's recommendations with respect to those 24 issues. In that process we have identified 5 alternative responses, any one of which could be the appropriate response to each of those 24 issues. These five alternatives are:

- A. Legislation to provide for pre-event judicial authorization for police action;
- B. Legislation to provide for pre-event ministerial approval or authorization for police action;
- C. Legislation to provide an exemption for police action;
- D. New policy directives to the police based upon an accurate statement of the statutory and common law powers of peace officers (as distinct from the McDonald Commission's statements of same);
- E. No action necessary.

Issues and Probable Recommendations

Issue	Probable Response (see alternative responses A to E above)
1. Dass/Dalia Wiretap Question	D
2. Moving a Motor Vehicle for the Purpose of Installing an Interception Device Pursuant to a Judicial Authorization	D
3. Surreptitious Entry (entry without any warrant currently provided for by law but not including entry/search without warrant as an incidental power to arrest)	A
4. Civil Trespass and Provincial Trespass Statutes	D
5. The Offences of (1) Break and Enter, (2) Theft, (3) Mischief, (4) Trespass at night, (5) Possession of House Breaking instruments, and (6) Conspiracy to commit trespass	E
6. Searching for and/or seizing articles in circumstances when the police officer is otherwise lawfully on the premises	D, C
7. Alleged possible breaches of other legislation (e.g. theft of electrical power, building code by-laws etc.)	E for the most part but C in some isolated situations (e.g. Hotel Registration)
8. Disclosure of intercepted private communications to Foreign Peace Officers	D/E
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14. False Identification	B
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16. Income of Police Operatives for Tax purposes	More work required

APPENDIX CPROCEDURE AND GUIDELINES RESPECTING SPECIAL DRIVER'S LICENCES

It has been determined that there is a real need for police officers to use driver's licences containing a name other than the true name of the licence holder. Accordingly, at the request of the Attorney General for Ontario and with the concurrence of the Solicitor General and Minister of Transportation and Communications, effective November 27, 1978, the following shall represent the only procedure by which police forces in Ontario shall obtain Ontario driver's licences for police officers and police operatives in a name other than the true name of the prospective licence holder, hereinafter called special licences. The Solicitor General shall be supplied with blank special licences once a year or as the need arises by the Assistant Deputy Minister, Drivers and Vehicles, of the Ministry of Transportation and Communications.

(1) Requests for special licences shall be made in writing to the Solicitor General, Deputy Solicitor General or if unavailable, their designate, hereinafter referred to as the Solicitor General, by the following:

- (a) The Officer in Charge of the Criminal Operations Branch of "O" Division of the Royal Canadian Mounted Police or the Officer in Charge of Drug Enforcement of "O" Division of the R.C.M.P. or the Area Commander of the Security Service of the R.C.M.P. in respect of requirements by that force for operations anywhere;
- (b) Assistant Commissioner, Special Services Division, of the Ontario Provincial Police or his Chief Superintendent;
- (c) Chief of Police or a Deputy Police Chief of the Metropolitan Toronto Police Force;

hereinafter called senior officers, who shall demonstrate to the Solicitor General the need, in the interests of the administration of justice, police enforcement or national security, for a special licence.

NOTE: (i) In any joint police forces project involving any of the three above noted forces and any other police forces, the senior officer from one of the three above noted forces shall make the request for a special licence;

(ii) The Ontario Provincial Police shall convey the contents of this memorandum to the Criminal Intelligence Service of Ontario of such other bodies or forces as may be deemed appropriate, so that forces other than the three above noted ones may be familiar with the process and seek the assistance of the Ontario Provincial Police in securing such licences.

(2) The Solicitor General shall, if satisfied, issue a blank special licence to the senior officer recording the licence number, date of request and issuance, the name of the senior officer and his police force.

(3) In exceptional cases where the senior officer is satisfied that the requirements of his force's operation are that the licence information be placed on M.T.C. drivers' files, he shall make a request in writing to the Solicitor General, who, upon being satisfied of the need, shall communicate in writing to the Assistant Deputy Minister, Drivers and Vehicles, the request for a special licence including sufficient details of the proposed user to permit a licence to be issued including:

name
address
sex
birth date
height
class of licence.

(4) The Ministry of Transportation and Communications shall cause to be issued the special licence to the Solicitor General who shall record the particulars of the special licence prior to giving it to the appropriate senior officer.

(5) Prior to the user receiving his special licence he shall surrender any valid driver's licence to the senior officer or local commanding officer which shall not be returned until the special licence has been surrendered.

(6) The senior police officer shall cause to be kept a register of all special licences obtained, in use or returned.

11-3

(7) The senior police officers shall not entertain requests for special licences unless the prospective user is a resident, of age and has complied with the laws of the province in which he resides as to the licensing of motor vehicle operators or chauffeurs. No special licence shall be granted for a class of licence for which the prospective user is not otherwise validly licensed.

(8) No recipient of a special licence shall lend his special licence to any other person or permit the use of it by any other person.

(9) No recipient of a special licence shall possess or have access to more than one driver's licence at a time, whether a special licence or not.

(10) Any one having in their possession a special licence shall, upon request by police enforcement agencies or in motor vehicle matters involving the public, reveal his true identity as soon as is reasonably practicable.

(11) No special licence shall be issued in any other manner other than that set out in this memorandum. The use of simulated licences will not be condoned.

(12) Any one possessing a special licence shall return it to his senior officer as soon as is practicable after the conclusion of the operation.

(13) The senior officer shall return the licence to the Solicitor General for cancellation or destruction as soon after the conclusion of the operation as is practicable.

(14) The Solicitor General, after logging the return of the special licence, shall advise the Assistant Deputy Minister, Drivers and Vehicles, of the disposition of such licences.

(15) All driver's licences obtained or in the possession of police forces in Ontario, prior to November 27, 1978, shall be returned to the Solicitor General for cancellation or destroyed, as the case may be, as soon as is reasonably practicable.

(16) No employee of the Ministry of Transportation and Communications shall be contacted respecting special licences except through the Solicitor General.

November 27th, 1978

APPENDIX DINDEX

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Highway Traffic Act, R.S.A. 1975, c.56.

s.50. (1) Any motor vehicle equipped with a siren and being

- (a) used for the transportation of any member of a fire brigade in response to an emergency call, or
- (b) used for the transportation of a peace officer in response to an emergency call or for the purpose of
 - (i) investigating a reported accident, or
 - (ii) detecting or preventing crime, or
 - (iii) making arrest,

...

may, while being so used and while the siren is being continuously sounded,

- (f) be operated at such speed as is reasonable and proper having regard to
 - (i) the traffic ordinarily upon the highway,
 - (ii) the use of the highway, and
 - (iii) the fact that it is being so used,
- (g) proceed past a red or stop signal sign without stopping, and
- (h) be operated at such speed as is reasonable and safe under the circumstances.

(2) Where required to do so for the purpose of carrying out his duties as a peace officer, a peace officer may, notwithstanding subsection (1),

- (a) operate a motor vehicle on a highway in excess of the speed limit thereon and at such speed as is necessary and reasonable having regard to the traffic ordinarily upon the highway and the fact that it is being so used,
- (b) drive past a red or stop signal or stop sign without stopping but only at such speed as is reasonable and prudent under the circumstances, and

- (c) drive and park a motor vehicle contrary to any rule of the road prescribed by this Act or a municipal by-law, if in the interest of law enforcement it is necessary and in the circumstances safe to do so.

s.95 (4) Nothing in this section shall be construed to prohibit police vehicles, ambulances or vehicles engaged in highway repair, maintenance or inspection work or by employees of the Safety Branch from parking upon the roadway when it is advisable to do so

- (a) to prevent accidents,
- (b) to give warning of hazards or of person on the highway, or
- (c) to remove injured persons, or
- (d) to repair roadway, or
- (e) for similar purposes

Motor Vehicle Act, R.S.B.C. 1979, c.288

Exemption for emergency vehicles

s.118 (1) Notwithstanding anything in this Part, but subject to subsections (2) and (3), a driver of an emergency vehicle may

- (a) exceed the speed limit;
- (b) proceed past a red traffic control signal or stop sign without stopping;
- (c) disregard rules and traffic control devices governing direction of movement or turning in specified directions; and
- (d) stop of stand.

(2) The driver of an emergency vehicle shall not exercise the privileges granted by subsection (1) unless he is

- (a) sounding an audible signal bell, siren or exhaust whistle and showing a flashing red light;
- (b) a peace officer in the immediate pursuit of an actual or suspected violator of the law; or
- (c) a peace officer engaged in a police duty of a nature that the sounding of a signal bell, siren or exhaust whistle would unduly hamper the performance of that duty, in which case he may exercise the privileges granted by subsection (1) by showing a red flashing light only.

(3) The driver of an emergency vehicle exercising a privilege granted by subsection (1) shall drive with due regard for safety, having regard to all the circumstances of the case, including

- (a) the nature, condition and use of the highway;
- (b) the amount of traffic that is on, or might reasonably be expected to be on the highway; and
- (c) the nature of the use being made of the emergency vehicle at the time.

RS1960-253-123; 1965-27-24; 1976-35-22.

Interpretation

1. In this act

...

"emergency vehicle" means

...

- (c) a motor vehicle driven by a peace officer, constable or member of the police branch of Her Majesty's Armed Forces in the discharge of his duty;

"peace officer" means a constable or a person having a constable's powers;

Highway Traffic Act, R.S.M. 1970, c.H-60.

EMERGENCY VEHICLES

Operation of emergency vehicles.

- s.99 (1) Notwithstanding anything in this Part, but subject to subsection (2), (3), (4), and (5), the driver of
- (a) an emergency vehicle; or
 - (b) any other vehicle being operated in an urgent emergency and driven by, or escorted or accompanied by, a peace officer;
- when responding to, but not when returning from, an emergency call or alarm, or when in pursuit of an actual or suspected violator of the law, may
- (c) exceed the speed limit;
 - (d) proceed past a traffic control signal showing a red light or a stop signal without stopping;
 - (e) disregard rules and traffic control devices governing direction of movement or turning in specified directions; and
 - (f) stop or stand.

NOTE: See Regina vs. Lundt [1964] 3 All E.R. 225.

Requirements respecting emergency vehicles.

- s.99 (2) Subject to subsection (3), the driver of a vehicle to which subsection (1) applies shall not exercise the privileges granted under that subsection unless
- (a) he is sounding an audible signal by horn, gong, bell, siren, or exhaust whistle; and
 - (b) the vehicle, if equipped therewith, is showing
 - (i) a flashing red light; or
 - (ii) white light emitted by the headlamps which are lighted alternately and in flashes; or
 - (iii) both such flashing red light and alternately flashing headlamps.

Am. S.M. 1970, c.70, s.46.

Application of subsec. (2)

- s.99 (3) Subsection (2) applies only in a case where compliance therewith is necessary in the interests of the public or of safety.

Definitions.

2. In this Act,

...

(14) "emergency vehicle" means, subject to subsection (4) of section 3, a vehicle used

(i) for police duty; or

(36) "peace officer" means

- (i) any member of the Royal Canadian Mounted Police Force and any other police officer, police constable, constable, or other person employed for the preservation and maintenance of the public peace; and
- (ii) any person lawfully authorized to direct or regulate traffic, or to enforce this Act or traffic by-laws or regulations, by making arrests for violation thereof or otherwise;

Motor Vehicle Act, R.S.N.B. 1973, c.M-17, as amended.

EMERGENCY VEHICLES

s.110

(1) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(2) The driver of an authorized emergency vehicle may

(a) park or stand, irrespective of the provisions of this Act.

(b) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation,

(c) exceed the speed limits so long as he does not endanger life or property, and

(d) disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions herein granted to an authorized emergency vehicle apply only when the driver of any such vehicle while in motion sounds a bell, siren, or exhaust whistle, and when the vehicle is equipped with at least one lighted lamp displaying a flashing red light visible under normal atmospheric conditions from a distance of one hundred fifty metres to the front of such vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle and the driver thereof, when following a suspected violator of the law, need not sound any audible signal. 1977, c.M-11.1, s.17.

1. In this Act

"authorized emergency vehicle" means

(a) a motor vehicle operated by a peace officer in the course of his duties or employment.

...

...

Police Act, s. of N.B. 1977, c. P-9.2.

3(4) A member of the Royal Canadian Mounted Police or a member of a police force shall not be convicted of a violation of any Provincial statute if it is made to appear to the judge before whom the complaint is heard that the person charged with the offence committed the offence for the purpose of obtaining evidence or in carrying out his lawful duties.

Highway Traffic Act, R.S.N. 1970, c.152

s.196. (1) Notwithstanding any other provision of this Part, the driver of an emergency vehicle when responding to, but not when returning from, an emergency call or alarm, or when in pursuit of an actual or suspected violator of the law may

(a) subject to subsections (2) and (3), exceed the speed limit; and

(b) stop or stand.

(2) The driver of an emergency vehicle shall not exceed the speed limit unless he is sounding an audible signal by bell, horn, siren or exhaust whistle and is showing a flashing red light if the vehicle is so equipped.

(3) The driver of an emergency vehicle who is exceeding the speed limit shall drive with due regard for safety having regard to all the circumstances of the case, including

(a) the nature, condition and use of the highway;

(b) the amount of traffic that is on or might reasonably be expected to be on the highway; and

(c) the nature of the use being made of the emergency vehicle at the time.

2. In this Act

...

(y) "emergency vehicle" means

(i) a motor vehicle driven by a constable or by a member of the police branch of any of Her Majesty's Armed Forces where there is an urgent emergency justifying a rate of speed in excess of any maximum rate of speed provided for in this Act,

(iv) a motor vehicle where there is an urgent emergency justifying a rate of speed in excess of any maximum rate of speed provided for in this Act;

- 127.
- (1) "constable" includes all members of the Newfoundland Constabulary, and of the Royal Canadian Mounted Police Force from time to time stationed in Newfoundland;

NORTH WEST TERRITORIES

Vehicle Ordinance, R.O.N.W.T. 1974, c. V-2

EMERGENCY VEHICLES

- s.95. (1) Notwithstanding anything in this Part but subject to subsections (2) and (3), the driver of an ambulance, police vehicle or fire-fighting vehicle, when responding to, but not when returning from, an emergency call or alarm, or when in pursuit of an actual or suspected violator of the law, may
- (a) exceed the speed limit;
 - (b) proceed past a red traffic-control signal or stop sign without stopping;
 - (c) disregard rules and traffic-control devices governing direction of movement or turning in specified directions; and
 - (d) stop or stand.
- (2) The driver of an ambulance, police vehicle or fire-fighting vehicle shall not exercise the privileges granted by paragraphs (1) (a), (b) and (c) unless he is sounding an audible signal by bell, siren or exhaust whistle and is showing a flashing red light.
- (3) The driver of an ambulance, police vehicle or fire-fighting vehicle exercising any of the privileges granted by subsection (1) shall drive with due regard for safety having regard to all the circumstances of the case, including,
- (a) the nature, condition and use of the highway;
 - (b) the amount of traffic that is on or might reasonably be expected to be on the highway; and
 - (c) the nature of the use being made of the ambulance, police vehicle or fire-fighting vehicle at the time.
- (4) The driver of an ambulance is deemed to be responding to an emergency call from the time he receives such call until he arrives at the destination of his passenger. 1967 (2d), c.9, s.93.

NOVA SCOTIA

Motor Vehicle Act, R.S.N.S. 1967, c.191.

Exemption of Police or Fire Vehicle

- s.83. (4) This Section shall not apply in the case of police and fire department vehicles when the same are operating in emergencies and the drivers sound audible signal by bell, siren, compression or exhaust whistle, but this proviso shall not operate to relieve the driver of a police or fire department vehicle from the duty to drive with due regard for the safety of all persons using the highway. R.S., c.191, s.83; 1968, c.40, s.5; 1970, c.53, s.9; 1970-71, c.51, s.12.

Exemption of Police or Emergency Vehicle

- s.99. (1) The speed limitations as set forth in this Act shall not apply to vehicles when operated with due regard to safety under the direction of the police in the chase or apprehension of violaters of the law or or persons charged with a suspected of any such violation, nor to fire departments or fire patrol vehicles when travelling in response to a fire alarm, nor to public or private ambulances when travelling in emergencies and the drivers thereof sound audible signal by bell, siren or exhaust whistle.

Duty To Drive Safely

- (2) This Section shall not relieve the driver of any such vehicle from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others. R.S., c.191, s.99.

Exemption for Emergency Vehicle

- s.121 (4) This Section shall not apply in the case of police and fire department vehicles when the same are operating in emergencies and the drivers sound +[an] audible signal by bell, siren, compression or exhaust whistle, but this proviso shall not operate to relieve the driver of a police or fire department vehicle from the duty to drive with due regard for the safety of all persons using the highway. R.S., c.191, s.121; 1978-79, c.29, s.1.

1. In this Act,

...

(att) "police" or "police officer" means a member of the Royal Canadian Mounted Police, a police officer appointed by a city, town or municipality, a police officer appointed by the Attorney General, or a motor vehicle inspector;

ONTARIO

Highway Traffic Act, R.S.O. 1980, c.198, as am.

- s.109. (12) The speed limits prescribed under this section or any regulation or by-law passed under this section do not apply to,
- (a) a motor vehicle of a municipal fire department while proceeding to a fire or responding to, but not returning from, a fire alarm or other emergency call; or
 - (b) a motor vehicle while used by a person in the lawful performance of his duties as a police officer.
- s.114. (3) Where signs or traffic control devices have been posted or placed under subsection (2), no person shall drive or operate a vehicle on the closed highway or part thereof in intentional disobedience of the signs or traffic control devices.
- (4) Subsection (3) does not apply to a vehicle or road-building machine while it is being used for maintenance of the highway or an ambulance, a fire department vehicle, a public utility emergency vehicle or a police vehicle.
- (5) Every person using a highway closed to traffic in accordance with this section does so at his own risk and the Crown or road authority having jurisdiction and control of the highway is not liable for any damage sustained by a person using the highway so closed to traffic.
- s. 124. (1) In this section,
- (a) "emergency vehicle" means,
 - ...
 - (ii) a vehicle while used by a person in the lawful performance of his duties as a police officer.
- (6) Notwithstanding subsection (5), where an emergency vehicle, upon which a siren is continuously sounding and upon which a lamp is producing intermittent flashes of red light visible from all directions, is brought

to a full stop at a red signal-light, the driver of the emergency vehicle may, after ascertaining that such movement can be made in safety, proceed through the intersection without waiting for a green signal-light to be shown. 1979, c.57, s.10(2).

Regulation 477 under the Highway Traffic Act
R.R.O. 1980.

With application to the regulations regarding the parking of vehicles on the King's Highway:

6. Sections 2,3,4 and 5 do not apply to a vehicle parked by a person in the lawful performance of his duty as a police officer or by a person in the lawful performance of his duty on behalf of a road authority.
O. Reg. 518/75, s.4, part.

PRINCE EDWARD ISLAND

Highway Traffic Act, R.S.P.E.I. 1974, c.H-6, as am.

s.222. (1) Notwithstanding any other provision of this Act, the driver of an emergency vehicle when responding to, but not when returning from, an emergency call or alarm, or when in pursuit of an actual or suspected violator of the law, may

(a) subject to subsections (2) and (3), exceed the speed limit;
and

(b) stop or stand.

(2) The driver of an emergency vehicle shall not exceed the speed limit unless he is sounding an audible signal by bell, horn, siren or exhaust whistle and is showing a flashing red light if the vehicle is so equipped.

(3) The driver of an emergency vehicle who is exceeding the speed limit shall drive with due regard for safety having regard to all the circumstances of the case, including

- (a) the nature, condition and use of the highway;
- (b) the amount of traffic that is on or might reasonably be expected to be on the highway; and
- (c) the nature of the use being made of the emergency vehicle at the time.

1. In this Act

...

(e.2) "emergency vehicle" means

...

(iv) a motor vehicle driven by a peace officer or constable or by a member of the police branch of any of Her Majesty's Armed Forces in the discharge of his duty where there is an urgent emergency justifying a rate of speed in excess of any maximum rate of speed provided for in this Act.

...

...

(m.3) "peace officer" includes a member of the Royal Canadian Mounted Police, a police officer or police constable appointed by and for a city, town or village to which the Village Service Act, R.S.P.E.I. 1974, Cap. V-5, applies, and any officer of the division designated as such by the Minister under this Act;

QUEBECHighway Safety Code, c. C24.1

1. In this Code, unless the context indicates otherwise,

...

"emergency vehicle" means a road vehicle used as a police car in accordance with the Police Act (chapter P-13), a vehicle used as an ambulance in accordance with the Public Health Protection Act (chapter P-35), a fire department vehicle, or any other vehicle recognized as an emergency vehicle by the Régie;

- s.402. The driver of an emergency vehicle is exempt, in the exercise of his functions, from the obligations imposed by sections 325 to 328, 333, 334, 337, 364 to 369 and 373, whenever the situation requires it. 1981, c.7,s.402.
- s.403. No emergency vehicle may be driven under the exemption contemplated in section 402 unless the vehicle is equipped with appropriate light or sound signals and unless they are in operation. 1981, c.7,s.403.

Section 402 applies to the following sections of the Highway Safety Code:

- 325. "yield sign"
- 326. "stop sign"
- 327. Red light
- 328. Flashing red light
- 333. Green arrow
- 334. Lane traffic lights
- 337. Defective traffic lights (also "stop" signs)
- 364. Stopping on public highways
- 365. Parking (also parking on a slope)
- 366. Parking
- 369. Prohibited parking or stopping
- 373. Unsafe driving
- Speed limits.

SASKATCHEWANVehicles Act, R.S.S. 1978, c.V-3

- s.139. (12) Nothing in this section applies to a traffic officer, police officer or police constable when engaged in the performance of his duties. R.S.S. 1965, c.377, s.133; 1967, c.82, s.32; 1968, c.83, s.25; 1972, c.144, s.23; 1976-77, c.100, s.13.
- s. 144. (18) Notwithstanding anything in this Act or in any municipal bylaw, fire engines, fire department apparatus, ambulances and police cars, when on emergency duty only and when continually sounding the emergency siren, gong or horn and showing to the front a clearly visible flashing red light, shall have the right of way upon all public highways over all other vehicles and shall not be bound to stop at stop streets pursuant to any municipal bylaw or at places or times mentioned in this Act.

107.

YUKON TERRITORY

Motor Vehicle Ordinance, R.O.Y.T. 1975, c.M-11.

s.145. (1) Any motor vehicle equipped with
a siren and being

(b) used for the transportation of a peace
officer in response to an emergency
call or for the purpose of

- (i) investigating a reported accident,
- (ii) detecting or preventing crime,
- (iii) making an arrest,

may while being so used and while the siren is
being continuously sounded,

(f) be operated at such speed as is
reasonable and proper having regard to

- (i) the traffic ordinarily upon the
highway,
- (ii) the use of the highway, and
- (iii) the fact that it is being so used,

(g) proceed past a red or stop signal or
stop sign without stopping, and

(h) be operated at such speed as is
reasonable and safe under the
circumstances.

(2) Where required to do so for the purpose
of carrying out his duties as a peace officer,
a peace officer may, notwithstanding sub-
section (1),

(a) operate a motor vehicle on a highway
in excess of the speed limit thereon
and at such speed as is necessary
and reasonable having regard to the
traffic ordinarily upon the highway
and the fact that it is being so used,

(b) drive past a red or stop signal or
stop sign without stopping but only
at such speed as is reasonable and
prudent under the circumstances, or

(c) drive and park a motor vehicle contrary
to any rule of the road prescribed by
this Ordinance or a municipal by-law,

if in the interest of law enforcement it is
necessary and in the circumstances safe to do so.

2. (1) In this Ordinance

...

"peace officer" means a member of the
Royal Canadian Mounted Police;

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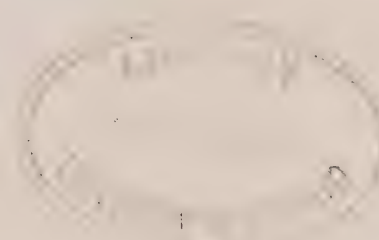
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CONFERENCES FEDERALES-PROVINCIALES DES
PROCUREURS GENERAUX, DES MINISTRES RESPONSABLES
DE LA JUSTICE PENALE ET DES MINISTRES RESPONSABLES
DU SYSTEME CORRECTIONNEL

Rapport du Comité fédéral-provincial des fonctionnaires
chargé de la justice pénale présenté aux sous-ministres
de la justice, sous-procureurs généraux et
solliciteurs généraux adjoints
au sujet du rapport de la Commission McDonald

Juin 1983

Ontario



OTTAWA (Ontario)
Les 11 et 12 juillet 1983

RAPPORT DU
COMITÉ FÉDÉRAL-PROVINCIAL DES FONCTIONNAIRES
CHARGÉ DE LA JUSTICE PÉNALE
AUX
SOUS-MINISTRES DE LA JUSTICE,
SOUS-PROCUREURS GÉNÉRAUX
ET SOLLICITEURS GÉNÉRAUX ADJOINTS
AU SUJET DU
RAPPORT DE LA COMMISSION MCDONALD

JUIN 1983

RAPPORT DU
COMITÉ FÉDÉRAL-PROVINCIAL DES FONCTIONNAIRES
CHARGÉ DE LA JUSTICE PÉNALE
AUX
SOUS-MINISTRES DE LA JUSTICE,
SOUS-PROCUREURS GÉNÉRAUX
ET SOLLICITEURS GÉNÉRAUX ADJOINTS
AU SUJET DU
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PREMIÈRE PARTIE

A. INTRODUCTION ET SOMMAIRE DE GESTION

Dans le cadre de ses recommandations pour la réforme législative, la Commission McDonald fait référence à ce que l'on pourrait appeler "l'antinomie inhérente", terme employé pour décrire en bref l'assertion prétendant que pour bien appliquer la loi, le corps policier peut être dans l'obligation de violer la loi.

Le Rapport de la Commission soutient que la police est tenue de respecter continuellement la loi, principe fondamental que ce comité approuve sans réserve. Toutefois, au-delà de cette approbation, ce comité est en sérieux désaccord avec la Commission McDonald, tant sur le plan de la méthodologie que sur le plan des recommandations.

Comme nous l'avons déjà déclaré (annexes A et B), nous estimons qu'en exécution de son mandat initial, la Commission fut amenée à fonder ses délibérations sur une fausse prémisse: la croyance qu'il est plus approprié de scruter les activités "non autorisées ou prévues par la loi" que les activités "prohibées par la loi".

Dans la deuxième partie du présent rapport, nous formulons nos recommandations au regard des 24 questions associées à la teneur de la loi ou à l'application de cette dernière par le corps policier, questions dont l'examen aurait amené la Commission McDonald à conclure que le corps policier "a violé la loi" ou serait dans l'obligation de "violier la loi" pour s'acquitter équitablement et efficacement de ses fonctions.

Dans le cours de l'examen des 24 questions susmentionnées, nous avons envisagé cinq lignes d'action possibles:

- A. Etablir des mesures législatives liant l'action de la police à un mandat judiciaire préalable.
- B. Etablir des mesures législatives liant l'action de la police à une approbation ou à une autorisation ministérielles préalables.
- C. Etablir des mesures législatives réglementant l'exemption relative aux activités de la police.
- D. Astreindre le corps policier à de nouvelles lignes de conduite fondées sur une interprétation précise (autre que celle de la Commission McDonald) des pouvoirs accordés aux agents de la paix aux termes des lois et de la common law.
- E. Ne prendre aucune mesure particulière.

Comme nous le soulignons dans la deuxième partie du présent rapport, la ligne d'action que nous recommandons pour la plupart de ces questions dérive des options (D) et (E). La fiabilité de cette ligne d'action, en tant que substitut à l'élaboration de nouvelles lois, est solidaire de l'approbation de notre opinion, autrement dit de l'acceptation du fait que dans la majorité des cas, l'application rationnelle de la règle de droit, et, dans le contexte de cette application, l'exercice des fonctions, pouvoirs et attributions conférés aux agents de la paix par les lois particulières et la common law ne donnent lieu à aucune "antinomie".

Des résultats de notre analyse, nous concluons qu'avec l'établissement de lignes de conduite pertinentes et uniformes pour le corps policier et les avocats de la Couronne, on peut se passer d'élaborer de nouvelles mesures législatives dans un grand nombre de domaines.

Notre analyse suppose indubitablement l'examen futur, d'une façon objective, d'une ou plusieurs questions subsidiaires, perspective suffisamment justifiée par au moins trois affaires à l'étude par les tribunaux (voir la troisième partie du présent rapport).

Dans la deuxième partie du présent document, nous examinons la règle de droit et plus particulièrement la façon dont les fonctions, pouvoirs et attributions conférés au corps policier par les lois particulières et la common law peuvent être judicieusement et préalablement interprétés dans le dessein de guider le corps policier et les avocats de la Couronne (en tant que conseillers du corps policier) avant la mise en oeuvre des pratiques d'enquête.

Voici les conclusions tirées de cet examen:

- a) La règle de droit est toujours souveraine, en ce sens qu'aucun agent de la paix n'est en droit de violer la loi. Il est néanmoins entendu que les agents de la paix ont des attributions et, en rapport avec ces attributions, des pouvoirs dont les autres personnes ne sont pas investies.
- b) L'application judicieuse de la règle de droit, moyennant l'interprétation globale des lois courantes du royaume, démontre à l'évidence que le concept d'"antinomie inhérente" soutenu par la Commission McDonald est mal fondé.
- c) Comme prélude à l'examen de ce corps de lois, on doit tenter de vérifier les fonctions, attributions, droits et privilèges des membres du corps policier.
- d) "Non seulement il est impossible, mais encore il est peu souhaitable d'assigner des limites rigides aux pouvoirs et fonctions des agents de police": Schacht c. O'Rourke, supra, en application de la partie I du Principe Waterfield.
- e) "Il est de loin préférable que les tribunaux, au fur et à mesure de l'examen des affaires dont ils sont saisis et compte tenu des exigences de chaque cas et des sauvegardes dictées par l'intérêt public, déterminent si, dans les circonstances en cause, la police remplit une fonction légitime." Schacht c. O'Rourke.
- f) Utiliser l'épreuve Waterfield pour savoir si un agent de police, s'acquittant d'une fonction ou d'un devoir qui lui sont assignés, agissait de façon légitime ou illégitime.

g) Pour appliquer l'épreuve Waterfield on doit:

I. Déterminer ce que l'agent de police faisait réellement et savoir tout particulièrement si son comportement constituait à première vue une entrave illégitime à la liberté ou du droit de propriété d'une personne donnée.

II. Dans l'affirmative, il serait pertinent de vérifier:

A) si le comportement en question s'inscrit dans le cadre global d'exécution d'une fonction imposée par la loi ou admise par la common law;

et

B) si le comportement en cause, bien qu'il s'inscrive dans le cadre global d'exécution de la fonction susmentionnée, a donné lieu à l'exercice, de façon injustifiable, des pouvoirs associés à cette fonction.

h) Dans le cadre de l'évaluation du comportement particulier de l'agent de police en fonction de l'épreuve Waterfield, on doit, d'entrée en jeu, préciser dans quelle mesure ce comportement constituait à première vue une entrave illégitime à la liberté ou du droit de propriété d'une personne donnée (Waterfield I). Si le comportement ne répond pas aux critères de Waterfield I, il sera réputé légitime et l'affaire sera close.

Si le comportement répond aux critères de Waterfield I, il faut vérifier s'il répond à ceux de Waterfield IIA. Dans la négative, il sera probablement réputé illégitime.

Si le comportement répond aux critères de Waterfield IIA, il faut vérifier s'il répond également à ceux de Waterfield IIR. Dans l'affirmative, il sera probablement réputé illégitime et dans la négative, il sera réputé légitime.

i) L'épreuve Waterfield présuppose une "entrave à la liberté ou au droit de propriété d'une personne", pour la raison que l'illégitimité invoquée dans cette affaire concernait ces deux aspects des libertés et droits. Il est d'autres activités policières, telles les fausses procédures d'identification et d'enregistrement, qui ne comportent pas nécessairement "une entrave à la liberté ou au droit de propriété d'une personne" mais qui néanmoins peuvent constituer à première vue des violations ou des infractions prévues par un statut.

Dans l'exposé des faits de l'affaire Waterfield, on lit (p. 47):

"En conséquence, s'il est indubitablement logique de dire, d'une manière générale, que les agents de police sont tenus, par devoir, de lutter contre le crime et, lorsqu'un crime est commis, de traduire les contrevenants en justice, il est également facile de déduire, en se fondant sur la jurisprudence, que lorsque l'exercice de ces fonctions générales comporte une entrave à la liberté ou au droit de propriété d'un particulier, les pouvoirs des gendarmes ne sont pas illimités."

À notre avis, ce paragraphe se prête au moins à deux interprétations. Il peut laisser à entendre que lorsque l'activité policière ne comporte aucune "entrave à la liberté ou au droit de propriété d'une personne", les pouvoirs associés à la fonction de l'agent de police chargé de lutter contre le crime n'ont pas la même portée. S'il en est ainsi, on pourrait déduire que dans une situation qui ne constitue pas "une entrave à la liberté ou au droit de propriété d'une personne" mais implique de prime abord une violation ou une infraction prévues par un statut (telles la fausse inscription sur un registre d'hôtel ou, à un niveau plus grave, certaines infractions touchant le fonctionnement de la justice), l'agent de police n'aurait qu'à prouver qu'il exerçait ses fonctions dans le cadre de la lutte contre le crime et qu'il a agi en toute bonne foi. D'autre part, il se peut qu'en examinant les faits dont il était saisi, le tribunal ait négligé ce genre de situation et, partant, ne se soit pas proposé de laisser entendre que les pouvoirs associés à cette affaire étaient limités uniquement i) à une fonction très vaguement définie (par exemple, la lutte contre le crime) et ii) au jugement subjectif de l'agent de police sur ce qui constitue une activité raisonnable. Il nous semble que la ligne d'action la plus sage est d'appliquer la deuxième partie des motifs de Waterfield à l'un et l'autre cas. Partant de ce principe, nous proposons que l'activité policière qui constitue de prime abord une violation ou une infraction prévue par la loi soit évaluée suivant les étapes A et B de l'alinéa II du paragraphe g) ci-dessus (même si cette activité ne comporte pas à première vue une entrave à la liberté ou au droit de propriété d'une personne).

- j) L'approche susmentionnée ne permettra pas toujours de vérifier par avance la légitimité du comportement des agents de police, toujours est-il qu'elle pourra être mise en oeuvre avec suffisamment de précision, de manière à aider les officiers de justice de la Couronne à recommander des lignes de conduite et à conseiller par avance le corps policier au sujet de chaque activité.

Dans la troisième partie du présent rapport, nous examinons les 24 questions abordées par les recommandations de la Commission McDonald et envisageons par rapport à chacune d'elles les cinq lignes d'action possibles précédemment mentionnées. Nos conclusions à ce sujet peuvent être synthétisées comme suit:

<u>Ligne d'action</u>	<u>Questions abordées par les recommandations de la Commission McDonald (avec leurs numéros de référence dans la troisième partie du présent rapport)</u>
A. Établir des mesures législatives liant l'action de la police à un mandat judiciaire préalable.	<p>3. Entrées subreptices sans mandat; p. 75</p> <p>6. Recherche ou saisie ou recherche et saisie à la fois d'articles (non prévus par un mandat de perquisition), alors que la présence de l'agent de police sur les lieux est légitime; p. 80</p> <p>11. Vérification du courrier; p. 89</p> <p>12. Accès de la police aux renseignements confidentiels; p. 90</p>
B. Établir des mesures législatives liant l'action de la police à une approbation ou à une autorisation ministérielles préalables.	<p>14. Fausse identification; p. 94</p>
C. Établir des mesures législatives réglementant l'exemption relative aux actions de la police.	<p>13. La surveillance physique; p. 91 (voir également la catégorie D ci-dessous)</p>
D. Astreindre le corps policier à de nouvelles lignes de conduite fondées sur une interprétation précise (autre que celle de la Commission McDonald) des pouvoirs accordés aux agents de la paix aux termes des lois ou de la common law.	<p>1. Surveillance électronique - Les affaires Dass/Dalia et le litige sur le droit d'entrée; p. 59</p> <p>2. Déplacement d'un véhicule à moteur ou d'un autre bien meuble dans le dessein d'installer un dispositif d'interception en vertu d'un mandat décerné au titre de la partie IV.I du Code criminel; p. 72</p> <p>8. Divulcation de communications privées interceptées, à des agents de la paix étrangers; p. 86</p>

E. Ne prendre aucune mesure particulière

13. Surveillance physique; p. 91 (voir également la catégorie C ci-dessus)
4. Délit mineur d'intrusion et lois provinciales relatives aux violations de la propriété; p. 77
5. Les infractions suivantes:
1) entrée par effraction; 2) vol;
3) méfait; 4) intrusion de nuit;
5) possession d'instruments pouvant servir aux effractions de maisons;
6) complot en vue de commettre une intrusion; p. 79
7. Violations présumées d'autres lois (par exemple, vol du courant électrique (article 287 du Code criminel) et du Code du bâtiment, etc.); p.-
9. Violation présumée, par la GRC, de l'article 178.2 (dissimulation de faits connus) dans ses rapports aux procureurs généraux provinciaux qui soumettent des rapports annuels au corps législatif; p. 87
10. Le Comité de révision indépendant; p. 88
15. Les infractions suivantes:
falsification; faux semblant;
usurpation de nom ou de fonction;
intimidation; p. 96
16. Le revenu des agents de police aux fins de l'impôt; p. 97
18. L'abus de confiance (infraction prévue par l'article III du Code criminel); p. 99
19. Les commissions secrètes (infraction prévue par l'article 383 du Code criminel); p. 100
20. Les techniques d'interrogation; p. 10
21. La tromperie; p. 102
22. Le principe d'exclusion p. 103

On devrait souligner par ailleurs que les questions suivantes pourraient faire l'objet de travaux supplémentaires:

Rédaction de textes de loi

3. Entrées subreptices sans mandat
6. Recherche ou saisie ou recherche et saisie d'articles (non prévus par un mandat de perquisition), alors que la présence de l'agent de police sur les lieux est légitime.
11. Vérification du courrier
12. Accès de la police aux renseignements confidentiels
13. Surveillance physique
14. Fausse identification

Rédaction de lignes de conduite ou directives

1. Surveillance électronique - Les affaires Dass/Dalia et le litige sur le droit d'entrée.
2. Déplacement d'un véhicule à moteur ou d'un autre bien meuble dans le dessein d'installer un dispositif d'interception, en vertu d'un mandat décerné au titre de la partie IV.I du Code criminel.
8. Divulcation de communications privées interceptées, à des agents de la paix étrangers.
13. La surveillance physique.

Recherche

12. L'accès de la police aux renseignements confidentiels.
14. La fausse identification.

DEUXIÈME PARTIE - ANALYSE JURIDIQUE

A. LA RÈGLE DE DROIT

Dans son ouvrage An Introduction to the Study of the Law of the Consitution (Introduction à l'étude du droit constitutionnel), 10^e éd., Macmillan Press, A.V. Dicey, une autorité dans ce domaine, a exposé ce qui constitue probablement les assises de la common law. Bien que notre intérêt porte principalement sur le deuxième aspect de la règle de droit, il est utile d'examiner cette règle dans le contexte global du principe qu'elle sous-tend. Aux pages 183 et 184 de l'ouvrage précité, le célèbre auteur déclare:

"Depuis la conquête normande, deux traits particuliers distinguent les institutions politiques de l'Angleterre.

Le premier de ces traits atteste l'omnipotence ou la suprématie incontestée du gouvernement central dans l'ensemble du pays. Dans les premières époques de notre histoire, cette hégémonie de l'État ou de la nation s'exerçait à travers les pouvoirs de la Couronne. Le Roi était la source des lois et le gardien de l'ordre et la maxime suivie alors dans les cours, "tout fuit in luy et vient du lui al commencement", traduisait à l'origine un fait réel et avéré. À l'heure actuelle, cette suprématie royale est remplacée par la souveraineté du Parlement.

Aux pages 187 et 188, on lit:

"D'une manière générale, lorsque nous disons que la suprématie de la règle de droit est un élément distinctif de la constitution anglaise, nous exprimons au moins trois idées similaires et pourtant distinctes.

Nous entendons, d'entrée en jeu, qu'aucun homme ne peut être passible d'une peine ou légalement infligé d'un châtiment corporel ou d'une perte matérielle que s'il est déclaré, par les tribunaux du pays, coupable d'une infraction distincte aux lois en vigueur. Dans ce sens, la règle de droit s'oppose à tout régime de gouvernement fondé sur l'aptitude des personnes en charge à exercer, en matière de contrainte, des pouvoirs étendus, arbitraires ou discrétionnaires.

et, à la page 193:

"En deuxième lieu, lorsque nous parlons de la "règle de droit" en tant qu'un trait caractéristique de notre pays, nous voulons dire que dans ce pays, personne n'est au-dessus de la loi et (ce qui est différent) que chaque homme, quel que soit son rang ou sa position, tombe sous le coup de la loi du royaume et est justiciable des tribunaux ordinaires."

et, à la page 195:

"Il existe encore un troisième aspect distinct sous lequel la "règle de droit" ou la prédominance de l'état de droit peut être considérée comme un trait particulier des institutions anglaises. En effet, pouvons-nous dire, notre constitution puise ses idées-forces dans la règle de droit, car ses principes généraux (par exemple le droit de la liberté individuelle et le droit de la liberté de réunion) sont dérivés de décisions judiciaires déterminant les droits des particuliers dans des litiges soumis aux tribunaux; par contre, la garantie (telle qu'elle est) accordée par un grand nombre de constitutions étrangères aux droits des personnes découle ou semble découler des principes généraux de la constitution."

REMARQUE: L'incidence de la proclamation de la Constitution de 1982 (le 17 avril 1982) sur l'applicabilité de ce troisième aspect de la règle de droit au Canada doit être soulignée, mais elle ne fera pas l'objet d'un examen plus détaillé dans le cadre du présent rapport, en raison de la priorité donnée au deuxième aspect de la règle de droit.

La position du corps policier et de ses activités vis-à-vis de "la Loi" doit être compatible avec le second aspect de la règle de droit. À l'évaluer autrement, on laisserait entendre que le corps policier n'est pas tenu de respecter la loi, ce qui constitue une proposition non seulement inacceptable sur le plan légal mais encore préjudiciable aux meilleurs objectifs de l'administration de la justice.

Il est donc nécessaire de faire un examen plus approfondi du second aspect de la règle de droit. En exposant de nouveau ce deuxième aspect, Dicey continue aux pages 202 et 203:

"Une fois de plus, cela veut dire le régime d'égalité juridique ou la soumission égale de toutes les classes de la société à la loi du lieu appliquée par les juridictions ordinaires; dans ce sens, la "règle de droit" exclut l'idée de toute exemption, en faveur des dirigeants ou d'autres personnes, du devoir d'obéissance à la loi qui gouverne les autres citoyens ou de la juridiction des tribunaux ordinaires; sous cet angle, nous n'avons peut être rien qui corresponde réellement au "droit administratif" ou aux "tribunaux administratifs" de la France. Le "droit administratif" reconnu par les pays étrangers repose sur la notion selon laquelle les questions ou litiges mettant en cause le gouvernement ou ses fonctionnaires dépassent la compétence des tribunaux civils et doivent être réglés par des organismes spéciaux et plus ou moins officiels. Ce concept est absolument inconnu dans le corps de lois de l'Angleterre; en fait, il est fondamentalement incompatible avec nos us et coutumes."

"La Loi", telle qu'elle s'applique à tous les groupes et à toutes les personnes, est identique et ne tolère aucune exemption. Les expressions suivantes sont de haute importance:

"Nul n'est au-dessus de la loi"

"Chaque homme...est sujet à la loi du royaume"

"égalité devant la loi"

"la soumission égale de toutes les classes de la société à la loi du lieu"

"exclut l'idée de toute exemption, en faveur des fonctionnaires ou autres personnes, du devoir d'obéissance à la loi qui gouverne les autres citoyens"

L'erreur fondamentale commise par la Commission McDonald en adoptant la conception de "l'antinomie inhérente" a été de ne pas étudier et appliquer correctement les termes "loi" et "loi du lieu". Les activités

policières qui ne satisfont pas aux dispositions de ces termes sont illégales et inadmissibles. Une fois de plus, nous devons invoquer les paroles de Dicey.

En Angleterre, le concept de l'égalité juridique ou de la soumission universelle de toutes les classes à une seule loi administrée par les tribunaux ordinaires a pris toute son extension. Dans notre pays, chaque fonctionnaire, qu'il soit premier ministre, gendarme ou percepteur des impôts, assume comme tout autre citoyen la responsabilité de tout acte illégitime dont il est l'auteur. On relève fréquemment dans les rapports des cas de fonctionnaires poursuivis en justice et condamnés, à titre personnel, à une peine ou à une amende à titre de dommages-intérêts pour des actes qu'ils avaient commis dans le cadre de leur fonction mais dépassant leur compétence. Quoiqu'ils exécutent les ordres de leurs supérieurs hiérarchiques, le gouverneur de colonie, le secrétaire d'état, l'officier militaire et tous les subordonnés, sont aussi responsables de leurs actes illicites que n'importe quel particulier et n'importe quelle personne ne faisant pas partie des cadres de la Fonction publique. Il est vrai que les fonctionnaires tels que les soldats ou les ecclésiastiques de l'Église établie sont soumis, tant en Angleterre que dans les autres pays, à des lois qui ne touchent pas le reste de la nation et, dans certains cas, sont justiciables de tribunaux qui n'ont aucune juridiction sur leurs compatriotes, ce qui revient à dire qu'ils sont gouvernés, jusqu'à un certain point, par ce qu'on pourrait appeler la loi administrative. Mais ce fait n'est nullement incompatible avec le principe selon lequel, en Angleterre, tous les hommes sont soumis à la loi du royaume; bien qu'en raison de sa situation, un soldat ou un ecclésiastique assume des responsabilités légales dont les autres hommes sont exempts, il n'échappe pas, généralement parlant, aux devoirs d'un citoyen ordinaire."

(soulignés à dessein)

Ou'entendons-nous donc par "loi (ordinaire) du Royaume"?

Le dictionnaire Oxford commence ses nombreuses définitions du terme loi par:

"Ensemble de règles décrétées ou coutumières reconnues exécutoires par une communauté."

Par conséquent, "la loi" en tant que concept doit être considérée intégralement. Bien que nous ayons tendance, en tant qu'avocats, à diviser la loi en domaines ou aspects, nous ne devons pas perdre de vue qu'elle constitue en tout temps l'ensemble complet de toutes les lois reconnues.

Le concept de la "loi ordinaire", tel qu'il définit les paramètres acceptables des actes et omissions de chaque personne, doit également être considéré dans un sens global. Si "la loi" ainsi que la common law étaient considérées comme un ensemble unique de statuts et d'autres textes législatifs, on concluerait que cet ensemble ne s'applique pas exactement de la même façon à chaque personne ou à chaque situation de fait qu'il a plutôt conservé un profil flexible et dynamique dont certains segments ou aspects ne s'appliquent qu'à des personnes ou groupes de personnes particuliers, et qu'il a assigné à ces personnes ou groupes de personnes des responsabilités assorties de compétences ou pouvoirs correspondants. Par exemple, la loi permet au chirurgien qui traite au bord de la route une victime inconsciente de "porter atteinte", dans le cadre de ce traitement, au corps de la victime. Il est vrai que la loi semble consentir implicitement à dégager le médecin de certaines responsabilités tant qu'il n'agit pas de façon négligente, mais l'on peut dire que cet aspect de "la loi" ne s'applique qu'aux personnes placées dans une telle situation et seulement dans des circonstances définies. Par ailleurs, cet aspect de la loi a une portée limitée; le médecin sera protégé par la loi tant qu'il n'agira pas de façon négligente. S'il traverse négligemment la voie, la protection spéciale dont il bénéficie cesse d'exister. De même, "la loi" compte plusieurs aspects qui ne s'appliquent qu'à des personnes précises (par exemple, l'alinéa 4) de l'article 25 du Code criminel) ou à des situations de fait particulières, (par exemple, le droit d'employer la force dans le cas de l'autodéfense ou de la provocation - article 34 du Code criminel, ainsi que les articles 30 à 33, 35 à 45, 90 et 96).

À ce stade, il est essentiel de souligner qu'au fur et mesure qu'elle impose des devoirs particuliers ou des obligations spéciales sur des catégories de personnes, "la loi" tente de créer simultanément le pouvoir

ou la compétence dont il faut jouir pour assumer cette responsabilité. L'article 26 de la Loi d'interprétation, une codification d'un principe de la common law, constitue peut être le meilleur exemple de ce principe. Néanmoins, le pouvoir ou la compétence accordés simultanément à ceux qui assument une responsabilité spéciale en vertu de la loi se limitent exclusivement à ce qui est nécessaire pour assumer cette responsabilité dans une situation de fait particulière.

Cette approche globale fondée sur les principes généraux est beaucoup plus valable que l'approche adoptée par la Commission McDonald qui a choisi d'examiner séparément chaque aspect de la loi. En effet, cette dernière façon de procéder entraîne inévitablement des conflits ou des contradictions et doit, pour cette raison entre autres, être rejetée lors de l'étude de la situation d'une personne ou d'un groupe par rapport à "la loi ordinaire." Avenant le cas où la proposition susmentionnée serait acceptée, il resterait à examiner "la loi du lieu" dans son ensemble, dans la mesure où elle intervient dans l'activité du corps policier.

En premier lieu, il sera nécessaire de considérer les devoirs et les responsabilités généraux assignés au corps policier par les divers statuts et la common law. En deuxième lieu, on devra examiner les compétences ou pouvoirs spéciaux que la loi confère au corps policier dans des situations de fait particuliers. En dernier lieu, lors de l'étude de tout acte particulier attribué à un agent de police, il sera nécessaire de déterminer si le comportement de ce dernier excédait les limites prévues par cet ensemble unique de lois. Sous l'affirmative, cet acte pourrait être réputé illégal ou ne tombant pas sous le coup de "la loi du royaume" et, dans ce cas, la "règle de droit" prévaut contre les autres. Par contre, si le comportement en cause tombe sous le coup de "la loi", il sera nécessaire d'instaurer de nouveaux droits statutaires ou de poursuivre l'agent de police en justice ou de le condamner à des peines disciplinaires pour sa prétendue infraction à la loi; nous disons "prétendue", pour la raison que cette infraction n'existe pas, le comportement de l'agent de police étant légitime.

B. LES DEVOIRS, POUVOIRS ET ATTRIBUTIONS DU CORPS POLICIER

1. Par statut

Le Parlement et les corps législatifs de toutes les provinces ont passé des statuts définissant les devoirs et les pouvoirs des corps policiers relevant de leurs juridictions respectives. Bien qu'ils se distinguent sur le plan du libellé et de la portée, ces statuts s'accordent pour imposer aux agents de police l'obligation de lutter contre le crime et de maintenir la paix. Voici les dispositions légales pertinentes:

(a) Loi de la G.R.C., S.R.C. 1970, C. R-9

- a. 18 Il est du devoir des membres de la Gendarmerie qui sont agents de la paix, sous réserve des ordres du Commissaire,
- a) de remplir toutes les fonctions confiées aux agents de la paix en ce qui concerne le maintien de la paix, la lutte préventive contre le crime, les infractions aux lois du Canada et aux lois en vigueur dans toute province où ils peuvent être employés, l'arrestation des criminels et des contrevenants ainsi que d'autres personnes qui peuvent être légalement mises sous garde;
 - b) d'exécuter tous les mandats qui peuvent, selon la présente loi ou les lois du Canada ou les lois en vigueur dans quelque province, être légalement exécutés par des agents de la paix, et, à cet égard, de remplir toutes les fonctions et d'accomplir tous les services qui peuvent être légalement effectués par ceux-ci, selon la présente loi ou les lois du Canada ou les lois en vigueur dans une province quelconque;
 - c) de remplir toutes les fonctions qui peuvent être légalement exercées par des agents de la paix à l'égard de l'escorte et du transfèrement de condamnés et d'autres personnes sous garde, à destination ou en provenance de quelque tribunal, lieu de punition ou de détention, asile ou autre endroit; et
 - d) de remplir les autres attributions et fonctions que prescrit le gouverneur en conseil ou le Commissaire.

b) LEGISLATION PROVINCIALE (LOIS DE POLICE)

Alberta, S.R.A. 1980 c. P-12

a. 31 (1) Every member of a police force has the power and it is his duty to

(a) perform all duties that are assigned to peace officers in relation to

(i) the preservation of peace,

(ii) the prevention of crime and of offences against the laws in force in Alberta, and

(iii) the apprehension of criminals and offenders and others who may lawfully be taken into custody,

and

(b) execute all warrants and perform all duties and services thereunder or in relation thereto that under the laws in force in Alberta may lawfully be executed and performed by peace officers.

(2) A member of a municipal police force has authority throughout Alberta in the execution of his duties as a member of the municipal police force for which he is appointed or when acting pursuant to a direction under subsection (3).

(3) The Solicitor General may at any time, with the oral or written consent of the chairman of the commission if there is one, or if none, of the mayor of an urban municipality, direct a member of the municipal police force to serve in any part of Alberta outside the boundaries of the municipality.

(4) The urban municipality shall be reimbursed by the Solicitor General for the salaries and expenses of any member of the municipal police force serving outside the urban municipality pursuant to a direction under subsection (3).

Colombie-Britannique, S.R.C.B., c.331

- a. 27 (1) The chief constable of a municipal force has, under the direction of the board, general supervision over the municipal force, and shall perform the other functions and duties assigned to him under the regulations of any Act.
- (2) A municipal force shall, under the direction of the chief constable, perform the duties and functions respecting the enforcement of municipal bylaws, the criminal law and the laws of the Province, and the general maintenance of law and order in the municipality, as may be assigned to it or to a peace officer by the board, under the regulations or under any Act.
- a. 30 (1) Subject to subsection (2) and section 24(2), a municipal constable or a special municipal constable has, subject to the direction of the board, jurisdiction in the municipality of the board that appointed him to exercise and carry out the powers, duties, privileges and responsibilities that a police constable or peace officer is entitled or required to exercise or carry out at law or under any Act.
- (2) Where the minister believes an emergency exists outside the municipality in which a municipal constable or special municipal constable has jurisdiction, he may direct one or more municipal constables or special municipal constables to exercise their jurisdiction in the part of the Province in which the emergency exists.
- (3) Where the minister makes a direction under subsection (2), the Minister of Finance shall pay, from the consolidated revenue fund, the salary and other expenses of the municipal constable or special municipal constable during the period he is performing duties in the part of the Province in which the emergency exists.

(4) Notwithstanding subsection (1), a municipal constable has, while he is on duty in the course of his employment, the jurisdiction throughout the Province of a provincial constable.

(5) Where a municipal constable exercises his jurisdiction under subsection (4) outside the municipality of the board that appoint him, he shall, if possible, notify the provincial force or municipal force of the area in which he exercises his jurisdiction in advance, but in any case shall promptly after exercising his jurisdiction notify the provincial force or municipal force.

Manitoba

S.M. 1970, c.100-Cap.M225

- a. 5 Without restricting the generality of the foregoing, and subject to the direction of the commission, the members of the force shall
- (a) perform all duties that are assigned to constables in relation to the preservation of peace, the prevention of crime and of offences against the laws in force in Manitoba and the apprehension of criminals and offenders and others who may lawfully be taken into custody;
 - (b) execute all warrants and perform all duties that under the laws in force in Manitoba may lawfully be executed and performed by constables, police or peace officers;
 - (c) perform such duties as may from time to time be assigned to them by the commissioner.

S.M. 1970, c.207-Cap.P150

- a. 287(2) Each constable shall hold office during the pleasure of the council, and has the same powers and privileges, and is subject to the same liability and to the performance of the same duties, and may act within the same limits, as a constable appointed by the Lieutenant Governor in Council.

Nouveau-Brunswick, 1977, c.P-9.2

- a. 12 (1) Each police officer appointed under this Act is charged with responsibility for
- (a) maintaining law and order,
 - (b) preventing offences against the law,
 - (c) enforcing penal provisions of the law,
 - (d) escorting and conveying persons in custody to or from a court or other place,
 - (e) serving and executing court process in respect of offences against the law,
 - (f) maintaining order in the courts, and
 - (g) performing all other duties and services that may lawfully be executed and performed by him,
- and shall discharge his responsibility
- (h) within the limits of the municipality for which he is appointed, and
 - (i) within the Province
 - (i) at the request of the Minister, or
 - (ii) when he is investigating a matter that arose wholly or partially within, or is pursuing a person fleeing from, the municipality for which he is appointed, but in such case he shall immediately notify the police force responsible for policing the area in which he is acting of the purpose of his investigation or action.
- (2) A member of the Royal Canadian Mounted Police who is investigating an alleged offence or otherwise is acting as a peace officer in an area policed by another police force shall immediately notify the police force responsible for policing the area in which he is acting of the purpose of his investigation or action.

Terre-Neuve 1970, c.58

- a. 13 It is the duty of members of the force, subject to the orders of the Chief of Police, to
- (a) perform all police duties of any kind whatsoever that may be assigned to the force by the Minister from time to time;
 - (b) act as wardens, inspectors, patrolmen, guides or in other like capacities if so appointed under any of the laws of Canada or of the province; and
 - (c) perform such other duties and functions as are, from time to time, prescribed by the Lieutenant Governor in Council or the Minister.

Nouvelle-Écosse, c.P-17

- a. 16(1) Each municipal police force and the chief officer and the officers of each municipal police force are charged with the enforcement of the penal provisions of all the laws of the Province and the municipality and any penal laws in force within the municipality except as otherwise directed by this Act or any other enactment or by the Attorney General.
- (2) Each municipal police officer shall have all the power and authority of a provincial constable under this Act
- (a) within the limits of the municipal for which he is appointed, and
 - (b) within the Province when he is acting outside the municipality for which he is appointed at the request of the Attorney General, or assisting a provincial constable or a member of the Royal Canadian Mounted Police Force who is ex officio a provincial constable or when he is pursuing a matter that arose within, or a person fleeing from, a municipality for which he is appointed.

- (3) Notwithstanding subsection (2), the Attorney General, by order in writing, may confer the power and authority of a provincial constable upon a member or the members collectively of a police force of any municipality.

Ontario, S.R.O. 1980, c.381

- a. 56 Every chief of police, other police officer and constable, except a special constable or a by-law enforcement officer, has authority to act as a constable throughout Ontario.
S.R.O. 1970, c.351, a.54.
- a. 57 The members of police forces appointed under Part II, except assistants and civilian employees, are charged with the duty of preserving the peace, preventing robberies and other crimes and offences, including offences against the by-laws of the municipality, and apprehending offenders, and commencing proceedings before the proper tribunal, and prosecuting and aiding in the prosecuting of offenders, and have generally all the powers and privileges and are liable to all the duties and responsibilities that belong to constables.
(souligné à dessein)

Ile-du-Prince-Édouard, S.R.I.P.É. 1974, c.P-9

- a. 2(1) The force includes all officers, inspectors, constables, and men specially appointed for the enforcement of any statute of Prince Edward Island.
- (2) All the officers, members, clerks and employees of the force are responsible to the Minister of Justice and shall perform such duties and exercise such powers as may be prescribed under the provisions, rules and regulations made by or under this Act.
- a. 8 The officers, constables, and members of the force shall have all the powers, privileges, rights and immunities conferred upon any policeman, police constable, constable or

peace officer under the Criminal Code (Canada) S.R.C. 1970, Chap. C-34 or under any statute of the province not inconsistent with the provisions in this Act.

- a. 9 Every member of the force shall be ex officio a constable under the Fish and Game Protection Act.
- a. 10 Every officer or member of the force shall be a constable under the Liquor Control Act S.R.I.P.É. 1974, Cap. L-17 and shall have all the powers, authorities, and immunities of a constable under the provisions of that Act.
- a. 11 Every officer and member of the force shall be an inspector for the enforcement of the Highway Traffic Act.
- a. 17 Every member of the Royal Canadian Mounted Police shall, while the agreement is in force, have all the powers, authorities, privileges, rights and immunities possessed and enjoyed by any policeman, police constable, constable or peace officer under any law of this province.
- a. 18 Every member of the Royal Canadian Mounted Police shall, while the agreement is in force, be deemed to be a peace officer with power and authority to investigate breaches of provincial statutes and offences under the Criminal Code (Canada) S.R.C. 1970, Chap. C-34 and shall have the powers of peace officers and constables with regard to the arrest and detention of offenders.

Québec, 1980, c.p-13

- a. 2 Les membres de la Sûreté ainsi que les policiers municipaux sont, dans tout le territoire du Québec, constables et agents de la paix; il en est de même de tout constable spécial dans le territoire pour lequel il est nommé, sous réserve toutefois des restrictions contenues dans l'écrit constatant sa nomination.

- a. 39 La Sûreté est, sous l'autorité du procureur général, chargée de maintenir la paix, l'ordre et la sécurité publique dans tout le territoire du Québec, de prévenir le crime ainsi que les infractions aux lois du Québec, et d'en rechercher les auteurs. De plus, malgré l'article 67, si un corps de police municipal ne peut agir adéquatement faute d'effectifs, d'équipement ou d'expertise ou pour une autre raison grave, le procureur général peut, de sa propre initiative ou à la demande d'une municipalité, charger exceptionnellement la Sûreté d'y assurer l'ordre temporairement ou d'y faire ou poursuivre une enquête.
- a. 67 Tout corps de police municipal et chacun de ses membres sont chargés de maintenir la paix, l'ordre et la sécurité publique dans le territoire de la municipalité pour laquelle il est établi, ainsi que dans tout autre territoire sur lequel cette municipalité a compétence, de prévenir le crime ainsi que les infractions à ses règlements et d'en rechercher les auteurs.

Saskatchewan, S.R.S. c.P15

- a. 37 (1) A police force shall consist of a chief of police and such other officers and personnel as the board considers necessary.
- (2) A member of a police force shall, before entering upon his duties, take and subscribe to an oath in form 1.
- (3) Unless otherwise indicated in his appointment a member has the power and the responsibility to:
- (a) perform all duties that are assigned to constables or peace officers in relation to:
 - (i) the preservation of peace;
 - (ii) the prevention of crime and offences against the laws in force in the municipality; and
 - (iii) the apprehension of criminals, offenders, mentally ill persons and others who may lawfully be taken into custody.

(b) execute all warrants and perform all duties and services thereunder or in relation thereto that under the laws in force in the municipality may lawfully be executed and performed by constables or peace officers; and

(c) perform all duties that may lawfully be performed by constables or peace officers in relation to the escort and conveyance of persons in lawful custody to and from courts, places of confinement, correctional facilities or camps, hospitals or other places.

(4) Unless otherwise indicated in the appointment, a member has authority to exercise throughout the province the powers and duties mentioned in subsection (3).

2. En vertu de la common law

La dernière partie de l'article 55 de l'Ontario Police Act (Loi de la police de l'Ontario) confère aux agents de police tous les pouvoirs, privilèges, devoirs et attributions des gendarmes (en vertu de la common law). Qu'elle soit nécessaire ou non, une telle confirmation statutaire établit clairement que l'on doit recourir à la common law pour compléter la loi du lieu (notion globale) dans la mesure où elle s'applique aux agents de police.

Nous considérons les textes invoqués qui suivent comme l'énoncé précis des dispositions de la loi régissant les fonctions du corps policier:

1) Halsbury

206. Fonctions générales du gendarme. La fonction principale du gendarme demeure, comme elle l'était au dix-septième siècle, le maintien de l'ordre public (b). De cette fonction générale découle un certain nombre de devoirs particuliers qui s'ajoutent à ceux assignés par la loi et comprennent notamment les devoirs mentionnés ci-après.

Le premier devoir d'un gendarme est de prévenir continuellement la perpétration des crimes (c). Si un gendarme estime d'une manière raisonnable que les agissements d'une personne donnée risquent d'aboutir à une violation de l'ordre public, il est de son devoir d'empêcher ces agissements (d).

Il est généralement de son devoir de protéger la vie et la propriété (e) et partant, de surveiller la circulation routière (f).

Bien qu'il soit tenu de recueillir toutes les informations possibles au sujet des crimes et infractions perpétrés, le corps policier n'est généralement pas habilité à contraindre quiconque à divulguer les faits qu'il connaît ou à répondre aux questions qu'on lui pose (g).

- 11) Rapport de la Royal Commission on Criminal Procedure intitulé:
The Investigation and Prosecution of Criminal Offences in England
and Wales, 1981 @ p. 1.

A. Fonctions principales du corps policier

1. Dans son Rapport final de 1962, la "Royal Commission on the Police" énuméra les fonctions principales du corps policier, à savoir:

"Premièrement, la police se fait un devoir de maintenir l'ordre, de veiller au respect de la loi et de protéger les personnes et la propriété.

Deuxièmement, il est de son devoir de prévenir le crime.

Troisièmement, il lui incombe de démasquer les criminels et, dans le cours de l'interrogation des suspects, de contribuer au déroulement des étapes préliminaires de l'action en justice, sous réserve des limitations imposées par l'organisation judiciaire.

Quatrièmement, en Angleterre et au pays de Galles (mais non en Écosse), le corps policier assume la responsabilité de décider s'il faut poursuivre ou non en justice des personnes soupçonnées d'avoir commis des infractions criminelles.

Cinquièmement, en Angleterre et au pays de Galles (mais non en Écosse), le corps policier lui-même exerce de nombreuses poursuites associées aux fautes mineures.

Sixièmement, le corps policier se fait un devoir de surveiller la circulation routière et de conseiller les autorités locales sur les questions relatives à la circulation.

Septièmement, le corps policier exerce certaines fonctions pour le compte des ministères du gouvernement - il mène par exemple des enquêtes sur les personnes désireuses d'acquérir la nationalité britannique.

Huitièmement, selon une tradition de vieille date, le corps policier se fait un devoir de satisfaire quiconque demande son assistance; par ailleurs, il peut être appelé, en tout temps, à faire face à des situations d'urgence de tout ordre."

En ce qui concerne les relations entre le corps policier et les cadres administratifs du gouvernement, la Royal Commission on the Police déclarait également (p.2):

B. Le statut constitutionnel de la police

a. Le statut du gendarme

3. En Angleterre et au pays de Galles, l'agent de police remplit la fonction de gendarme relevant de la Couronne. Il est donc indépendant, en ce sens que son statut juridique n'est pas à proprement parler celui d'un employé, mais il est soumis à un code de discipline établi par des règlements ratifiés par le Parlement et à la surveillance de ses supérieurs hiérarchiques. Il doit surtout observer la loi par la façon dont il remplit ses devoirs. De tout temps, l'organisation des activités policières insiste sur cette indépendance et sur l'intégration du corps policier dans la communauté qu'il sert. L'essence de ce raisonnement se retrouve dans le rapport de la Royal Commission on Police Powers and Procedure de 1929 et ratifié par la Royal Commission de 1962:

"Le corps policier de ce pays n'a jamais été considéré par la loi ou par la tradition comme un organisme indépendant de la masse des citoyens. Malgré les nombreuses tâches astreignantes imposées au corps policier par des mesures législatives ou administratives, le principe de base reste le même: au regard de la common law, l'agent de police n'est qu'un employé chargé d'accomplir, par devoir, des actes qu'il aurait pu, sous l'impulsion du désir, accomplir spontanément.

De fait, l'agent de police est investi de pouvoirs dont ne jouit pas le citoyen ordinaire, et l'opinion publique, qui se manifeste au Parlement et ailleurs, considère avec jalousie toute entreprise visant à étendre le pouvoir du corps policier."

4. C'est une description trop simple du statut du corps policier. Comme on l'a déjà mentionné, l'agent de police est soumis d'un part au contrôle statutaire exercé par ses supérieurs hiérarchiques et, d'autre part, aux dispositions des codes criminel et civil. Fait élucidé dans les dernières parties du présent ouvrage, l'agent de police est investi de plus importants pouvoirs d'origine législative que le citoyen ordinaire, est membre d'un imposant service discipliné et technologiquement avancé, et bénéficie de tous les avantages et attributions de cette situation.

(souligné à dessein)

Antérieurement à la décision rendue par la Cour d'appel du Québec dans l'affaire Keable, infra, les décisions judiciaires faisant jurisprudence au Canada et en Angleterre ont corroboré la déclaration susmentionnée de la Royal Commission.

Dans l'affaire Ombudsman pour la Saskatchewan [1974] 46 D.L.R. (3^e) 452, qui impliquait la Division de la GRC en Saskatchewan, M. le juge Bayda, alors juge du Banc de la Reine, déclarait (pp. 454-455):

"Dans des affaires telles que McCleave c. la ville de Moncton [1902], 32 S.C.R. 106, 6 C.C.C. 219; Roy c. la ville de Thetford-Mines et al., [1954] S.C.R. 395; Bruton c. Regina City Policeman's Association [1945] 3 D.L.R. 437, [1945] 2 W.W.R. 237, page 296 (C.A. Sask.); et A.-G. de New South Wales c. Perpetual Trustee Co. Ltd. et al., [1955] A.C. 457, il fut établi que l'agent de police jouit de pouvoirs inhérents et non délégués qu'il exerce d'une façon discrétionnaire dans le cadre de sa fonction; il est un fonctionnaire de l'ordre judiciaire exerçant des droits statutaires. Il n'est pas, strictement parlant, un "employé" mais plutôt le titulaire d'une fonction publique. Par conséquent il ne devrait pas être considéré comme un "employé de la Couronne" mais bien comme un "fonctionnaire de la Couronne".

Dans l'affaire Perpetual Trustee, le vicomte Simonds déclarait (pp. 489-490):

"...Il existe une différence fondamentale entre les relations du serviteur avec son maître et celles du titulaire d'une fonction publique avec l'État qu'il sert. Ces dernières s'appliquent au gendarme. Il jouit de pouvoirs inhérents et non délégués qu'il exerce d'une façon discrétionnaire dans le cadre de sa fonction; il est un fonctionnaire de l'ordre judiciaire exerçant des droits statutaires non stipulés par un contrat. La distinction fondamentale réside dans le fait que ses relations avec le gouvernement ne s'inscrivent pas, pour employer un langage courant, dans le cadre des relations entre le serviteur et le maître."

Dans Conway c. Rimmer [1968] A.C. 910, Lord Reid déclarait (p.e 953):

"Le statut du corps policier est particulier. L'agent de police n'est pas le serviteur de la Couronne et ne reçoit pas ses ordres du gouvernement."

Cependant, ces pouvoirs doivent être considérés en rapport avec l'exposé des faits de l'affaire Bisaillon et Keable et al. [1982] 62 C.C.C. (2^e)340, où le juge d'appel Turgeon déclarait (pp. 349-350):

"En tant que gardien de l'ordre public, le Procureur général est en devoir de diriger les poursuites pénales. Il est investi d'un pouvoir administratif sur la Sûreté du Québec, de droits de regard sur l'application de toutes les lois concernant le corps policier, notamment la police de la Communauté urbaine de Montréal. L'examen de nombreuses clauses de la Loi de police, R.S.Q. 1977, c. P-13, démontre clairement le rôle fondamental attribué au cadre administratif de notre appareil policier. La Sûreté du Québec, sous l'autorité du Procureur général, est chargée de maintenir la paix, l'ordre et la sécurité publique sur l'ensemble du territoire du Québec, de prévenir le crime et les infractions aux lois du Québec et de rechercher les délinquants (a. 39 [am. 1979, c.67, a.19]). Les pouvoirs que la loi confère au procureur général sont en accord avec l'âme de cette institution au Canada; en tant que gardien de l'ordre public, le procureur général assume la charge des fonctions qui pourraient être autrement assignées en Angleterre.

Par conséquent, le fait de prétendre que l'agent de la paix jouit d'un statut indépendant du pouvoir exécutif, un argument basé sur la jurisprudence anglaise invoquée par l'appelant, n'est pas conforme à nos lois."

L'affaire Keable fut portée en appel devant la Cour suprême du Canada. La plaidoirie eut lieu les 3 et 4 mars 1982. Le prononcé du jugement est encore remis.

Les membres du Comité n'étaient pas unanimes au sujet de cette question.

De l'avis de la province de l'Alberta, le véritable statut constitutionnel du corps policier au Canada est décrit plus correctement dans la décision précitée de la Cour d'appel du Québec. Cette proposition est également étayée pour la décision de la Cour suprême du Canada dans l'affaire Di Iorio et Fontaine c. le Directeur du pénitencier de Montréal

et Brumet et al., 35 S.N.R.C. 57, où le juge Dickson déclarait (pp. 79-80):

"Depuis plus d'un siècle, les gouvernements fédéral et provinciaux conviennent de conférer aux gouvernements provinciaux le pouvoir d'administrer la justice pénale dans les limites de leurs frontières respectives. Le mandat provincial en la matière a logiquement été reconnu comme partie de la responsabilité du gouvernement provincial par rapport à l'ordre public au sein de la province.

L'alinéa 14) de l'article 92 de notre Constitution stipule, tel que je le comprends, que l'application de la loi incombe principalement à la province et que dans toutes les provinces, le Procureur général est le principal officier de justice de la Couronne. Il assume de vastes pouvoirs dans la plupart des domaines de l'administration de la justice, notamment sur le plan de la justice pénale dans les domaines du système juridique, de la police, des enquêtes judiciaires, des poursuites pénales et des peines correctionnelles. Le corps policier provincial, comme les procureurs de la Couronne provinciaux qui dirigent la grande majorité des poursuites pénales au Canada, relève exclusivement du Procureur général."

Les autres textes invoqués, encore qu'ils revêtent une grande importance historique, reflètent, partiellement du moins, les opinions admises dans le Royaume-Uni et ne sont donc pas particulièrement adaptables ou applicables à la situation du Canada.

3. Le principe Waterfield - Partie 1

Dans R.c. Waterfield [1964] 1QB 164, (1963) 48 CAR 42, [1963] 3 ALL E.R. 659, la English Court of Criminal Appeal a reconnu que les tribunaux avaient historiquement négligé de définir exhaustivement les fonctions, attributions, droits et privilèges d'un agent de la paix. On trouve, en page 47, l'énoncé de la Cour suivant:

"Dans les cas rapportés où l'on examinait les fonctions d'un agent de police, les tribunaux se sont reportés aux fonctions en termes généraux et n'ont pas tenté d'établir par définition la portée ou l'étendue de ces fonctions. Ainsi, dans l'affaire Betts c. Stevens [1910] 1 K. B. 1, le juge Bucknill a fait la déclaration suivante (p. 9):

"La première question à se poser est quelle tâche l'agent Pyke exécutait-il? On a prétendu qu'il ne s'agissait pas d'une fonction au sens de l'article et que le mot "fonction" désigne au sens de l'article une fonction spéciale en vertu de la common law ou de quelque loi sur les agents de police par opposition aux autres membres de la communauté. Je ne peux accepter cette affirmation. Dans l'affaire Glasbrook Bros. Ltd. c. Glamorgan County Council [1925] A.C. 270, le lord chancelier, Lord Cave, a énoncé ce qui suit (p. 277):

"Il ne fait aucun doute que les autorités policières ont la responsabilité absolue et inconditionnelle de prendre toutes les mesures qui leur semblent nécessaires au maintien de la paix, à la prévention du crime et à la protection de la propriété des délits criminels. En se reportant particulièrement à l'obtention de preuves, le juge Wright a dit, dans l'affaire Lushington [1894] 1 O.B. 420 (page 423): "Je suppose que dans ce pays, les agents de la paix ont indubitablement le pouvoir et le devoir de conserver des objets pouvant servir à prouver un crime lors d'un procès et ayant été obtenus par les agents sans qu'ils n'aient commis de tort.

Il serait difficile, de l'avis de cette Cour, d'enfermer en des limites rigoureuses les termes généraux dont on s'est servi pour définir les fonctions des agents de police et, au surplus, c'est inutile dans la présente affaire.

(souligné à dessein)

La Cour a ensuite entrepris d'élaborer une épreuve permettant de déterminer si un agent de police a agi illégalement. Cette épreuve est mentionnée et traitée plus loin sous la rubrique intitulée "Le principe Waterfield - Partie 2".

4. Le principe Waterfield - Partie 2

Dans l'affaire Waterfield, on retrouve, en page 47, cette épreuve formulée par la Cour:

"Il serait difficile, de l'avis de cette Cour, d'enfermer en des limites rigoureuses les termes généraux dont on s'est servi pour définir les fonctions des agents de police et, au surplus, c'est inutile dans la présente affaire. Dans la plupart des cas, il est probablement plus facile de se demander ce que l'agent faisait en réalité et notamment si sa conduite constitue de prime abord une atteinte illégale à la liberté personnelle ou à la propriété. Si tel est le cas, il y a lieu de rechercher a) si cette conduite entre dans le cadre général d'un devoir imposé par une loi ou reconnu par la common law, et b) si cette conduite, bien que dans le cadre général d'un tel devoir, a comporté un emploi injustifiable du pouvoir découlant de ce devoir.

En conséquence, s'il est indubitablement logique de dire, d'une manière générale, que les agents de police sont tenus, par devoir, de lutter contre le crime et, lorsqu'un crime est commis, de traduire les contrevenants en justice, il est également facile de déduire, en se fondant sur la jurisprudence, que lorsque l'exercice de ces fonctions générales comporte une entrave à la liberté ou au droit de propriété d'un particulier, les pouvoirs des gendarmes ne sont pas illimités."

5. Évolution du principe Waterfield

Le principe de l'affaire Waterfield a été appliqué sans exception et approuvé non seulement en Angleterre mais aussi au Canada. Il est cependant approprié de commencer l'examen de l'évolution du principe en regardant de plus près l'affaire Waterfield elle-même.

Dans Waterfield, supra, deux agents de police surveillaient une automobile qui, selon des renseignements reçus, avait servi à commettre un délit grave. Deux hommes y sont montés et ont tenté de s'en aller. Pendant qu'il faisait en sorte de les en empêcher, un des agents a été victime de voies de fait. Au procès, les deux hommes ont été trouvés coupables de voies de fait sur la personne d'un agent de police dans l'exercice de ses fonctions. En appel, les déclarations de culpabilité ont été infirmées parce que l'agent n'avait aucunement le droit de conserver le véhicule en vertu de la Road Traffic Act. Cependant, lorsqu'elle en est venu à cette conclusion, la Cour a formulé le principe cité plus haut.

La conclusion de l'affaire a été critiquée par Lord Denning M.R. dans Ghani c. Jones [1969] 3 ALL E.R. 1700 (C.A.). Dans ce cas, un agent de police enquêtant sur un meurtre est entré dans la résidence du demandeur. L'agent a posé des questions relatives au délit et a demandé aux plaignants et obtenu d'eux certains documents personnels. La police a revendiqué le droit de les conserver parce qu'ils pourraient constituer une preuve importante si des accusations étaient portées. Lord Denning a indiqué qu'il était du devoir de l'agent de police de conserver la preuve et qu'il en avait le droit au titre de la common law. Monsieur le Juge a fait l'énoncé suivant (pp. 1704-1705):

"J'ai eu des doutes concernant cette décision. J'imagine que l'automobile portait les traces causées par la collision avec le mur de brique. L'agent de police avait des raisons de croire que Lynn et Waterfield étaient impliqués dans un crime en conséquence duquel l'automobile portait des marques, ce qui aurait constitué une preuve essentielle lors du procès. Si l'on avait permis à Lynn et Waterfield de s'en aller avec l'automobile, ils auraient très bien pu éliminer ou

faire disparaître toute preuve compromettante. Voici ce que je pense de cette affaire. Lorsque c'est possible, le droit ne devrait pas permettre aux contrevenants de détruire les preuves pouvant les compromettre. L'exemple suivant met en doute l'épreuve Waterfield. Des voleurs "empruntent" une automobile privée et l'utilisent pour voler une banque et prendre la fuite. Ils abandonnent l'automobile au bord de la route. Les policiers trouvent l'automobile, c'est-à-dire l'instrument du crime, et souhaitent l'examiner et en relever les empreintes digitales. Le propriétaire de l'automobile "empruntée" surgit et demande qu'elle lui soit rendue. Il dit qu'il s'en ira avec l'automobile et qu'il ne leur permettra pas de l'examiner. Le policier ne peut-il pas lui dire: "Non, vous ne l'aurez pas tant que nous ne l'aurons pas examinée"? J'aurais cru que oui. Sa conduite lui fait sembler être un complice par assistance, si ce n'est avant le fait, du moins après. Quoi qu'il en soit, ce comportement est très déraisonnable. Même si les voleurs n'ont pas encore été attrapés, arrêtés ou mis en accusation, la police devrait néanmoins être en mesure de faire tout ce qui est nécessaire et raisonnable pour conserver la preuve du crime. La Court of Criminal Appeal ne nous a pas indiqué en quoi les affaires R. c. Waterfield et R. c. Lynn se distinguent de cette affaire. La Cour a simplement dit que les fonctions des agents de police ne justifiaient pas "d'empêcher l'enlèvement de l'automobile dans les circonstances". Ils ne nous ont pas dit quelles étaient les "circonstances" permettant de faire exception à la règle générale. Elles étaient peut être suffisantes. Je n'en sais rien."

La Cour Suprême du Canada a appliqué l'épreuve énoncée dans l'affaire Waterfield dans le cas de l'affaire R. c. Stenning [1970], 10 D.L.R. (3d) 224 et de l'affaire Knowlton c. la Reine [1973], 10 C.C.C. (2d) 377. Dans l'affaire Stenning, un coup de feu a été entendu près d'un établissement commercial et les enquêteurs ont trouvé à l'extérieur des locaux une personne qui semblait avoir été battue. Les agents ont remarqué quelqu'un se déplaçant à l'intérieur, ont frappé à la porte après s'être identifiés et, n'obtenant pas de réponse, sont entrés. Un des agents rencontra l'accusé, lui demanda son nom et ce qu'il faisait, ce à quoi l'accusé a répondu que cela ne le regardait pas. Il y eut un affrontement lorsque l'agent de police a empêché l'accusé d'utiliser le téléphone. La Cour suprême a maintenu que l'agent a agi dans l'exercice de ses fonctions, tel qu'énoncé dans la Police Act. D'une façon significative, les raisons

majoritaires du juge Martland se reportaient aussi à "une entrée non autorisée de nature technique" de la part de l'agent, notion que la Commission McDonald a précisément rejetée.

La déclaration suivante du Juge Martland se trouve en page 228:

"On nous a cité de nombreux précédents anglais et quelques jugements canadiens qui se rapportent tous à des faits différents de ceux de la présente affaire. La portée en est énoncée dans la décision de la Court of Criminal Appeal dans R. c. Waterfield, [1964] 1 Q.B. 164 (p. 170):

"Il serait difficile, de l'avis de cette Cour, d'enfermer en des limites rigoureuses les termes généraux dont on s'est servi pour définir les fonctions des agents de police et, au surplus, c'est inutile dans la présente affaire. Dans la plupart des cas, il est probablement plus facile de se demander ce que l'agent faisait en réalité et notamment si sa conduite constitue de prime abord une atteinte illégale à la liberté personnelle ou à la propriété. Si tel est le cas, il y a lieu de rechercher a) si cette conduite entre dans le cadre général d'un devoir imposé par une loi ou reconnu par la common law, et b) si cette conduite, bien que dans le cadre général d'un tel devoir, a comporté un emploi injustifiable du pouvoir découlant de ce devoir."

Dans les circonstances de la présente affaire, selon les constatations du Juge de première instance, peu importe que Wilkinson ait été en droit strict un intrus, il agissait dans l'exercice de ses fonctions au moment où l'intimé l'a frappé et il n'y avait eu jusqu'à ce moment-là aucune atteinte illégale à la liberté personnelle ou à la propriété de l'intimé."

Dans l'affaire Knowlton (supra), un agent assigné à un poste de sécurité au cours de la visite du Premier ministre Kosygin à Edmonton, a reçu l'ordre de fermer un espace devant un hôtel. Knowlton entre dans la surface fermée après s'être fait dire de ne pas le faire. La Cour suprême a confirmé sa condamnation en vertu de l'article 118 (a) du Code, mettant ainsi en application l'épreuve énoncée dans l'affaire Waterfield et se reportant à la définition des fonctions d'un agent de police de la Police Act de l'Alberta.

Le Juge en chef Fauteaux de la Cour a fait la déclaration suivante (pp. 379-380):

"Le devoir de la police et l'exercice des pouvoirs reliés à ce devoir sont les seules questions en litige en l'espèce. Vu que la police a porté atteinte à la liberté de l'appelant ou, plus précisément, à son droit de circuler librement sur une voie publique, il s'agit de déterminer les questions suivantes, telles qu'elles ont été formulées par la Court of Criminal Appeals dans l'arrêt Regina c. Waterfield et al. [1964] 1 Q.B. 164 (p. 170 et suiv.):

"(a) si pareille conduite de la police entre dans le cadre général de quelque devoir imposé par la loi ou reconnu en common law, et (b) si pareille conduite, bien qu'elle entre dans le cadre général de ce devoir, comportait un exercice injustifié de pouvoirs reliés à ce devoir."

Relativement à la première question: Le par. (1) de l'art. 26 de la loi dite Alberta Police Act (1971), c. 85, confère à un membre d'une sûreté municipale, à l'intérieur des limites de la municipalité, tous les pouvoirs et devoirs d'un membre de la Sûreté provinciale en vertu de la Partie I de la Loi. Le par. (1) de l'art. 2 de la Partie I prévoit l'établissement d'une Sûreté provinciale.

2(1) "...Pour le maintien de la paix, de l'ordre et de la sécurité publique, le respect de la loi et la prévention du crime..."

Et le par. (1) de l'art. 3 de la Partie I prévoit, notamment, que:

3(1) Tout membre de la Sûreté provinciale de l'Alberta a le pouvoir et est tenu

- a) d'exécuter tous les devoirs qui sont imposés aux agents de police en ce qui a trait
 - i) au maintien de la paix,
 - ii) à la prévention du crime et des infractions aux lois en vigueur en Alberta, et
 - iii) à l'arrestation de criminels, délinquants ou autres personnes qui peuvent être légalement détenues.

C'est un fait de notoriété publique que la visite officielle d'un chef d'Etat ou d'un haut dignitaire d'un pays étranger, quels que soient les liens d'amitié qui existent, est un événement qui comporte fréquemment une menace réelle ou appréhendée pour le maintien de la paix et qui, par conséquent, demande l'adoption de mesures de sécurité convenables et raisonnables par le pays d'accueil. Pour démontrer le bien-fondé de cette affirmation, il suffit amplement en l'espèce de mentionner l'attaque criminelle effectivement commise sur la personne du Premier ministre Kosygin dans la ville d'Ottawa, quelques jours seulement avant son arrivée à Edmonton. Cette attaque a reçu une publicité instantanée à travers tout le Canada et un très grand nombre de personnes au pays, y compris, tel qu'il a été reconnu, l'appelant lui-même, en ont été témoins à la télévision, au moment même où elle était commise. De ces faits, il est naturel de déduire que les personnes spécialement chargées au Canada d'assurer le maintien de la paix, de l'ordre et de la sécurité publique, ainsi que la sécurité du dignitaire en visite, ont pris immédiatement connaissance de cet incident regrettable.

Suivant les principes qui, pour le maintien de la paix et la prévention du crime, sont sous-jacents aux dispositions de l'art. 30, entre autres, du Code criminel, les autorités policières n'avaient pas seulement le droit, mais étaient tenues, en tant qu'agents de la paix, d'empêcher que pareille attaque criminelle sur la personne du Premier ministre Kosygin ne se répète au cours de sa visite officielle au Canada. À cet égard, ils avaient l'obligation précise de prendre des mesures convenables et raisonnables. La restriction au droit de libre accès du public aux voies publiques, au point stratégique susmentionné, constituait une mesure - non inusitée - que les autorités policières ont considérée et adoptée comme nécessaire pour atteindre ce but. À mon avis, pareille conduite de la police entraînait clairement dans le cadre général des devoirs qui leur étaient imposés."

Les raisons majoritaires dans l'affaire Stenning ont été appliquées par la British Columbia Court of Appeal à l'affaire Turnbridge c. The Queen [1977] 4 W.W.R. 77 dans laquelle deux agents de police se sont rendus sur les lieux d'une dispute familiale sur l'appel d'une femme dont le mari était ivre. La femme a annoncé qu'elle s'en allait et les agents étaient d'avis qu'il était de l'intérêt des deux jeunes enfants d'accompagner leur mère. Plus tôt, l'accusé avait frappé sa femme. Il n'y avait pas à

craindre pour les enfants mais l'accusé avait par inadvertance tenu la tête d'un des enfants contre la vitre d'une fenêtre. Comme les agents sortaient les enfants des lieux, l'accusé s'est livré à des voies de fait sur la personne d'un des agents de police. La British Columbia Court of Appeal s'en est remise à l'affaire Waterfield mais a maintenu que rien ne permettait raisonnablement de craindre que l'enfant soit blessé ou que la paix soit de nouveau troublée, ce qui rendait injustifié le fait que les agents fassent sortir les enfants des lieux. Nous trouvons le résultat de cette affaire plutôt difficile à comprendre.

L'affaire Stenning a aussi été utilisée dans l'affaire R. ex rel Crewson c. Alexandre, [1974] 4 W.W.R. 315. Un agent de police a aperçu une automobile faire des queues de poisson et a voulu l'arrêter. On a maintenu qu'en annonçant son intention de porter une accusation, l'agent de police avait dépassé ses compétences. Lors de l'appel de la condamnation sur déclaration sommaire de culpabilité, le juge Cormack de la Cour fédérale confirma la condamnation de l'accusé, citant l'affaire Stenning et l'affaire Waterfield. Monsieur le juge a fait la déclaration suivante (pp. 319-320):

"À l'appui de la première affirmation, l'avocat de l'appelant suggère que "même dans le cas de l'interprétation la plus naïve des faits et de la loi", rien ne peut indiquer que le demandeur conduisait dangereusement. Sans juger de cette question, il est à noter que l'article de la Highway Traffic Act portant sur la conduite dangereuse, traite de la conduite dangereuse ainsi que de "toute activité [...] pouvant distraire, surprendre ou déranger les autres utilisateurs de la route". Je ne pense pas, comme l'avocat, que l'agent de police a évalué naïvement les actes de l'appelant. Il a vu une automobile faire une queue de poisson sur la rue principale de la ville. L'automobiliste a fait des queues de poisson et a arrêté son véhicule à six pouces de l'agent de police qui se tenait carrément devant lui. L'agent de police a jugé nécessaire de dire au conducteur d'être plus "sérieux" en lui parlant. Il n'est pas important de savoir si le conducteur conduisait dangereusement ou s'il s'agissait d'une "autre activité" prévue dans la loi.

L'agent de police n'est pas tenu d'analyser chaque délit et de déterminer attentivement et scrupuleusement l'accusation à porter. Il lui suffit d'interpréter raisonnablement les faits de manière à justifier une accusation. De cette façon, il agit dans les limites de ses compétences. Cependant, s'il tente d'arrêter ou arrête une personne et, ce faisant, porte atteinte à sa liberté ou à sa propriété, il est possible qu'il ait outrepassé ses droits, et c'est alors qu'il devient nécessaire de déterminer l'origine de ses fonctions tel que suggéré dans l'affaire Regina c. Waterfield (supra).

La préparation d'une contravention ne constitue pas d'après moi une entrave à la liberté de la personne en question et ne le prive pas non plus de son droit de propriété.

Dans l'affaire R. c. August, Stirrett et Hundal [1974] 17 CCC 2d 194, BCCo.Ct., les accusés ont été arrêtés parce qu'ils causaient du désordre, délit punissable par une condamnation sur déclaration sommaire de culpabilité. Ils ont été acquittés, mais le juge Trainor de la Cour fédérale a fait la déclaration suivante (p. 197):

"Les activités des répondants ont suscité l'agacement et le ressentiment, ce qui aurait probablement pu causer le désordre. Dans ce cas particulier, les agents de police avaient le devoir de prendre toutes les mesures raisonnablement nécessaires pour maintenir la paix, prévenir le crime et protéger la propriété. S'ils étaient partis en laissant la situation s'envenimer au coin de la rue, ils n'auraient pas fait leur devoir."

Le juge Trainor de la Cour fédérale s'en est aussi reporté à l'affaire Stenning dans laquelle le juge Maitland se fonde sur l'affaire Waterfield, comme étant "le fondement de l'examen du devoir d'un agent de police dans chaque cas particulier".

Dans l'affaire R. c. Brown [1975] 23 CCC 2d 513 SCC, la Cour suprême du Canada examinait la situation en vue de déterminer si le répondant avait résisté à un agent de police dans l'exercice de ses fonctions. La majorité, dirigée par le juge Martland, en est venue à la conclusion qu'il avait agi en vertu de l'art. 54 de la Loi sur la police 1968 (Qué.) c.17 et

qu'il agissait par conséquent en exécution de ses fonctions, ce qui le justifiait de détenir quelqu'un, même si l'arrestation n'était pas légale au départ.

Dans l'affaire R. c. Landry [1981] 63 CCC 2d (Ont. CA), un agent de police a reçu des renseignements d'un citoyen qui avait vu deux individus tentant apparemment de voler des automobiles. L'agent de police a vu deux personnes correspondant à la description qu'on lui avait faite, a passé le seuil de l'appartement situé au sous-sol où il les avait vus et s'est mis à leur poser des questions concernant le délit. N'obtenant pas de réponse à ses questions, il a tenté de les arrêter pour tentative de vol. L'agent est alors entré dans la pièce et s'est tenu près de l'accusé. Lorsqu'il a essayé de contrôler l'accusé par la force, celui-ci l'a attaqué. La majorité de la Cour (les juges d'appel Houlden et Thorson) a rejeté l'appel de la Couronne contre l'acquiescement d'une accusation en vertu de l'art. 246(2)(a). Le juge d'appel Jessup, qui aurait reçu l'appel, a soutenu que l'agent de police n'était pas un intrus, au titre de son droit de faire une arrestation, et qu'il agissait par conséquent dans l'exercice de ses fonctions au moment de l'attaque. Se fondant sur des causes comme l'affaire Stenning, le juge d'appel Jessup a fait la déclaration suivante, rapportée en p. 298:

"En raison de son droit d'accès en vue d'arrêter MacLaren, l'agent de police n'était pas un intrus dans les lieux parce qu'il ne pouvait à la fois être un intrus et entrer légalement et que son droit d'accès de jure ne peut être fonction du fait qu'il ne savait pas que MacLaren n'habitait pas à cet endroit."

Cette affaire fait présentement l'objet d'un appel devant la Cour suprême du Canada.

Dans l'affaire R. c. Dedman [1981] 59 CCC 2d 97 (Ont.CA), le juge d'appel Martin s'en est reporté à l'épreuve Waterfield et a finalement décidé que l'agent de police qui fait signe à un automobiliste de s'arrêter afin de vérifier s'il est en état d'ébriété ne porte pas atteinte d'une façon injustifiée à la liberté de cette personne. Le juge d'appel Martin en est venu à la conclusion qu'un agent de la paix faisant observer le programme RIDE s'acquittait de ses fonctions générales en vue de prévenir le crime et de protéger la personne et la propriété, même si aucun pouvoir exprès ne lui permettait de faire signe aux automobilistes de s'arrêter pour les fins susmentionnées. Ceci va à l'encontre de l'opinion exprimée par la Commission McDonald qui veut que les pouvoirs des agents de police n'existent qu'en vertu d'un statut.

Dans son jugement, le juge d'appel Martin s'est reporté à l'affaire Donnelly c. Jackman [1970] 1 ALL E.R. 987 (C.A.). Dans cette affaire, les faits étaient les suivants (p. 988):

"Les faits révélés aux juges étaient les suivants. Le samedi 5 avril, vers 11 h 15, l'appelant marchait légalement sur le pavé lorsque l'agent de police Roy Grimmett, portant l'uniforme, l'a abordé pour lui poser des questions concernant un délit que l'agent croyait avoir été commis par l'appelant. L'agent de police a demandé à l'appelant s'il pouvait lui parler. L'appelant a ignoré l'agent et a continué de marcher en s'éloignant de lui. L'agent l'a suivi de près et lui a demandé, semble-t-il à plusieurs reprises, de s'arrêter pour lui parler. À un moment donné, l'agent a tapoté l'épaule de l'appelant, et celui-ci s'est retourné peu après pour tapoter à son tour la poitrine de l'agent en disant: "Nous sommes quitte maintenant, le flic."

Il est devenu évident pour l'agent, indique-t-on ensuite dans les conclusions, que l'appelant n'avait aucunement l'intention de s'arrêter pour lui parler. L'agent a posé encore une fois la main sur l'épaule de l'appelant dans l'intention de le faire s'arrêter, et c'est alors que l'appelant s'est retourné et a frappé l'agent avec une certaine force. La conclusion tirée est que l'agent n'avait pas touché l'appelant dans le but de l'arrêter officiellement ou de porter des accusations; l'appelant a été arrêté pour voies de fait sur la personne de l'agent de police dans l'exécution de ses fonctions, et amené au poste de police. Les juges ont condamné l'appelant, ayant trouvé la citation bien fondée."

La Cour d'appel a cité Waterfield et a maintenu la condamnation pour voies de fait sur la personne d'un agent de police dans l'exercice de ses fonctions. Le juge Talbot de la Cour d'appel s'est ainsi exprimé (p. 989):

"Si l'on examine les faits reliés à cette affaire, ce que les juges ont précisément voulu dire n'est pas très clair quand ils ont dit que l'agent de police avait touché l'épaule de l'appelant; quel que soit ce qu'ils aient vraiment voulu dire, il me semble évident, de par la façon dont ils ont traité l'affaire et d'après le résultat obtenu, qu'ils ont dû juger que c'était sans importance. Lorsque l'on tente de répondre à la question de savoir si l'agent de police agissait dans l'exercice de ses fonctions, je crois que l'on devrait se rappeler que toute entrave insignifiante à la liberté d'un citoyen n'entraîne pas l'adoption d'une attitude suffisante pour que l'agent dépasse ses compétences. Je suis d'avis que les faits révélés aux juges dans cette affaire ne justifient pas que l'on considère que l'agent a outrepassé ses fonctions lorsqu'il a abordé l'appelant pour lui parler. Par conséquent, on a eu raison de conclure à des voies de fait sur la personne de l'agent s'acquittant de ses fonctions et je rejette l'appel."

(souligné à dessein)

Dans l'affaire Johnson c. Phillips [1975] 2 ALL ER 682, un agent de police a ordonné à un citoyen de quitter les lieux où il y avait une urgence, ce qui l'aurait obligé à conduire en sens inverse dans une rue à sens unique. Le conducteur a refusé et a par la suite été accusé d'avoir empêché un agent de police de s'acquitter de ses devoirs. Lors de son procès, il a été condamné pour ce délit. Lorsque l'affaire a été portée en appel devant la Division du Banc de la Reine (le juge en chef Widgery et les juges Milmo et Wien) sa condamnation a été confirmée. C'est dans les termes suivants que la Cour a décidé que l'ordre de l'agent de police était justifié par les circonstances (p. 686):

"Nous en venons à la conclusion, après avoir examiné objectivement les faits reliés à l'affaire, que l'ordre donné était raisonnable et légal et qu'il venait à un moment où l'agent agissait dans le cadre de son devoir. S'il en était décidé autrement, ceci signifierait, ce qui est impensable, que l'appelant avait le droit de demeurer là où il était, empêchant peut-être des ambulances attendues de parvenir sur les lieux ou les contraignant à emprunter la rue Cannon par le mauvais bout ou encore empêchant d'autres véhicules d'emprunter la rue avant le départ de l'ambulance. Nous soulignons que nous ne décidons pas qu'un agent de police a le pouvoir d'inverser la circulation dans une rue à sens unique lorsqu'il le juge approprié. Aucune discrétion générale ne permet à un agent de police, même dans les cas où il considère lui-même que la situation est urgente, d'enfreindre les règlements de la circulation ou d'ordonner à d'autres personnes de les enfreindre."

La Cour est allée plus loin que dans le cas de l'affaire Waterfield dans un sens, mais a qualifié le pouvoir de la police dans une situation telle que les mesures prises par l'agent visent la protection de vies ou de propriétés. La Cour a déclaré:

"Les pouvoirs et obligations d'un agent de police en vertu de la common law n'ont jamais été définis exhaustivement et aucune tentative en ce sens n'a été faite; voyez par exemple l'affaire R. c. Waterfield dans laquelle le juge Ashworth, qui a rendu le jugement de la Cour, a dit: "Il serait difficile [...] d'enfermer en des limites rigoureuses les termes généraux dont on s'est servi pour définir les fonctions des agents de police et au surplus c'est inutile dans la présente affaire. Il y a aussi l'affaire Rice c. Connolly, pour laquelle le juge Parker (CJ) a déclaré:

"Il est évident, je crois, qu'il fait partie des obligations et devoir de l'agent de police de prendre toutes les mesures nécessaires pour maintenir la paix, prévenir le crime et protéger la propriété des dommages criminels. Il n'existe pas pour les pouvoirs et les obligations de l'agent de police de définition exhaustive mais il y a au moins ces définitions..."

Afin de suivre l'évolution et de prendre en main le volume et la complexité de la circulation routière, la législature a souvent adopté des règlements visant certains problèmes. On peut donner un exemple en se reportant à l'art. 22 (1) de la Road Traffic Act 1972.

L'art. 22(1), dans la mesure où il est approprié, se lit comme suit:

"Where a constable is for the time being engaged in the regulation of traffic in a road...a person driving or propelling a vehicle who -(a) neglects or refuses to stop the vehicle or to make it proceed in, or keep to, a particular line of traffic when directed so to do by the constable in the execution of his duty...shall be guilty of an offence."

On ne peut considérer ces statuts comme fixant entièrement les pouvoirs et les obligations d'un agent de police. Les rues à sens unique sont indubitablement une méthode relativement moderne pour palier les embouteillages, mais on ne peut dire que le Parlement a prétendu régler toute situation possible à l'aide de statuts ou de règlements.

La question précise à laquelle il faut répondre dans ce cas-ci peut se présenter ainsi: un agent de police a-t-il le droit, en vertu de son pouvoir de contrôler la circulation sur une route publique, stipulé dans la common law, d'enfreindre un règlement relatif à la circulation, par exemple circuler en sens inverse dans une rue à sens unique? S'il en a lui-même le droit, il s'ensuit qu'il peut obliger d'autres automobilistes à se conformer à ses directives d'enfreindre le règlement en question.

Si, par exemple, une bombe avait été posée dans le bistrot Windsor et que la rue Cannon était d'une certaine façon bloquée, l'agent de police pourrait-il légalement rouler en sens inverse dans son véhicule et obliger tous automobilistes présents à ce moment à faire de même? La réponse est oui, pourvu qu'il agisse dans l'exercice de ses fonctions en vue de protéger la vie ou la propriété: voir Hoffman c. Thomas.

Les conclusions des juges n'expliquent pas clairement pourquoi l'appelant, en s'arrêtant dix pieds derrière l'ambulance, entravait le travail des ambulanciers transportant les blessés. Il nous aurait été utile de connaître la nature exacte de l'incident en question. On peut raisonnablement conclure qu'il ne s'agissait pas que d'un incident insignifiant ou d'une querelle mineure de bistrot, parce que l'on soignait deux patients dans l'ambulance arrêtée et que d'autres ambulances étaient attendues, sans aucun doute pour transporter d'autres blessés à l'hôpital. On aurait difficilement pu s'attendre à l'arrivée d'autres ambulances à moins que des directives n'eussent été données en ce sens. On peut par conséquent dire que, dans les présentes circonstances, selon ce qu'on en connaît, des vies étaient probablement ou effectivement en danger. Manifestement, l'agent de police n'agissait pas par caprice et pour des motifs personnels. Il contrôlait la circulation dans une situation pouvant très bien être qualifiée d'urgente. Le fait qu'il ait non seulement porté atteinte à la liberté de l'appelant mais aussi qu'il lui ait ordonné d'enfreindre un règlement de la circulation change-t-il la situation?

La loi protège la liberté du sujet, mais elle doit reconnaître, en certaines circonstances, que les cours doivent examiner attentivement qu'un agent de police peut obliger des personnes à enfreindre un règlement de la circulation et ce, non seulement dans les cas traités explicitement par le Parlement. De l'avis de cette Cour, un agent de police aurait le droit, en vertu d'un devoir, de donner les directives jugées nécessaires à la protection de la vie et de la propriété. Il n'est pas nécessaire, dans le cas présent, de déterminer s'il n'y aurait pas d'autres circonstances qui justifieraient l'énoncé d'une directive. Chaque affaire doit être examinée à la lumière des faits qui s'y rapportent. Comme nous l'avons vu, les pouvoirs des agents de police ne sont pas illimités."

L'intégration par le tribunal de la protection de la vie ou de la propriété dans le principe Waterfield est embarrassante. La source de cette proposition est l'affaire Hoffman c. Thomas [1974] 2 ALL E.R. 233, dans laquelle l'accusé, qui avait obéi à la directive de s'arrêter à un poste de recensement, a refusé de participer au recensement et a quitté les lieux. En appel, sa condamnation pour avoir entravé le travail d'un agent de police contrôlant la circulation dans l'exercice de ses fonctions a été infirmée. Il a été déterminé, de l'avis de tous, qu'il n'existait pas de pouvoir statutaire permettant d'effectuer un recensement obligatoire de la circulation. La Cour en est venue à la conclusion que l'agent de police n'avait pas pour devoir, en vertu de la common law, d'obliger l'automobiliste à s'arrêter aux fins du recensement parce que ceci n'était pas relié à la protection de la vie ou de la propriété. Cependant, dans cette affaire, la Cour devait trancher la question de savoir si un agent de police avait le pouvoir d'arrêter les véhicules au hasard, aux fins d'un recensement. La Cour, en examinant une question reliée aux véhicules automobiles, n'a considéré qu'une part des devoirs de l'agent de police, soit le contrôle de la circulation. L'énoncé de la Cour se lit comme suit:

"Quelle est donc la fonction générale d'un agent de police dans de tels cas? Dans l'ouvrage intitulé Laws of England de Halsbury, se trouve l'énoncé suivant:

"Le principal devoir d'un agent de police est toujours de prévenir le crime. Si un agent de police peut raisonnablement soupçonner par les actes d'une personne qu'elle troublera la paix, il est de son devoir de l'en empêcher. Il doit, dans le cadre de ses fonctions générales, protéger la vie et la propriété, et la fonction générale de contrôler la circulation routière découle de ces fonctions."

Dans la présente affaire, je ne vois rien du tout qui puisse permettre de croire qu'une vie ou une propriété était en danger. Il n'y avait aucune raison pour que les activités qui avaient lieu engendrent un

tel danger et aucun des faits n'indiquait l'existence d'un danger dans cette affaire. Je suis donc d'avis que les faits reliés à cette affaire ne viennent pas appuyer l'idée que l'agent de police agissait en vue de protéger la vie ou la propriété; et même si le droit de contrôler la circulation doit nécessairement être très étendu, ce droit, comme je l'ai déjà indiqué, provient du devoir général de protéger la vie et la propriété.

L'agent de police n'a pas le droit de contrôler la circulation à ses propres fins ou pour se distraire; le contrôle de la circulation est essentiellement un droit, en raison des dangers pour la vie et la propriété, qui pourrait engendrer l'absence de contrôle de la circulation. En conséquence, il me semble que ce policier n'avait pas le droit, ni en vertu de la common law, ni des dispositions statutaires auxquelles nous avons été reportés, d'ordonner à l'appelant de quitter la route pour se rendre au poste de recensement.

Ce jugement a été de beaucoup écourté, tout comme la discussion, parce que de l'avis général, ce droit statutaire n'existe pas. J'en suis venu à la conclusion que lorsque l'agent de police a indiqué d'un signe à l'appelant de quitter la route et d'aller au poste de recensement, il a fait un signe qu'il n'avait pas le droit de faire, que ce soit en vertu de la common law ou d'un statut, et il me semble en conséquence qu'il n'a pu faire ce signe dans l'exercice de ses fonctions; pour cette seule raison, je crois que le raisonnement de l'appelant est bon et qu'il doit être appuyé."

L'insertion de la protection de la vie ou de la propriété comme condition préalable provient de l'affaire Hoffman; dans cette affaire, la Cour examinait le pouvoir de contrôler la circulation. Il faut cependant se rappeler que le pouvoir de contrôler la circulation découle d'une seule

partie des fonctions de l'agent de police, c'est-à-dire la protection de la vie et de la propriété. Il est par conséquent déterminé que la condition préalable relative à la protection de la vie et de la propriété ne s'applique pas aux pouvoirs et aux droits découlant d'autres fonctions et responsabilités.

6. L'approche globale comprenant Waterfield

Le principe Waterfield, tel qu'il a été élaboré, fait partie intégrante de la loi du royaume. Cette dernière, lorsqu'elle s'applique à un agent de police qui exécute son devoir, comporte un aspect qui ne s'applique pas au citoyen ordinaire. Cet aspect impose des responsabilités et des devoirs spéciaux à l'agent de police et, en même temps, lui fournit des moyens raisonnables mais efficaces, dans les limites de la règle de droit, pour s'en acquitter.

La décision de la Cour suprême du Canada rendue dans l'affaire Priestman c. Colangelo [1959], 124 CCC 1, illustre le mieux ce principe. Dans cette affaire, l'agent de police a fait feu sur un véhicule volé dans lequel s'y trouvaient des personnes soupçonnées par la police d'avoir commis des délits quelque temps plus tôt. Le conducteur a perdu la maîtrise de sa voiture et a tué deux innocents spectateurs. Les ayants droit à la succession des victimes ont intenté une action contre l'agent de police. Dans la décision 3:2, la Cour a soutenu que la preuve ne révélait pas la cause de l'action. M. le juge Locke, au nom de la majorité, a fait les remarques suivantes:

@ p. 3 "On doit se souvenir que l'appelant Priestman et l'agent de police Ainsworth, en tentant d'obtenir l'arrestation de Smythson, exerçaient les pouvoirs que leur conférait le Code criminel et, en même temps, tentaient de remplir un devoir qui leur était imposé par l'article 45 de la Police Act, S.R.O. 1950, c. 279, a. 45. Cet article, dans la mesure où l'on doit en tenir compte, stipule: "The members of police forces appointed under Part II shall be charged with the duty of preserving the peace, preventing robberies and other crimes and offences... and apprehending offenders."

Les agents, en plus d'exécuter alors une action permise par ces statuts, devaient également s'acquitter d'un devoir qui leur était imposé; ce fait, à mon avis, est en relation étroite avec la question touchant la responsabilité de Priestman."

@ p. 4 "Toutefois, ceci ne soustrait pas les personnes exerçant de tels pouvoirs statutaires au devoir de faire preuve de prudence dans l'exercice de leurs fonctions. Lord Blackburn souligne dans le passage susmentionné que les personnes autorisées, en vertu de la législation, à exécuter un travail donné, ne sont pas exemptes par cette dernière de l'obligation porter à ce travail un soin raisonnable de manière à éviter tout dégât superflu."

@ p. 5 "Il y aurait cependant des devoirs imposés aux officiers de la paix ou à d'autres pour la protection du public et dont l'exécution peut, bien souvent, exposer des tierces personnes à des risques divers.

On a défini de diverses façons la négligence passible de poursuites. Dans l'affaire Vaughan c. Taff Vale R. Co. (1860), 5 H & N 679, à la p. 688, 157 E.R. 1351, le juge Willes a dit que la négligence se définissait comme l'absence de la prudence justifiée par chaque type de circonstances. On oublie parfois la portée de ces derniers mots qui doivent pourtant être constamment gardés à l'esprit lorsqu'on envisage une action telle que celle-ci, qui est basée sur ce que l'on juge avoir été une façon négligente de remplir les devoirs qui incombaient aux gendarmes."

@ p. 8 "L'exécution du devoir imposé aux agents de police chargés d'arrêter les contrevenants ayant commis un crime et fuyant afin d'éviter d'être appréhendés, entraîne un risque de blessure pour les autres membres de la communauté. Ce risque, en l'absence d'une exécution négligente et déraisonnable d'un tel devoir, est imposé par le statut et est, à mon avis, damnum sine injuria. À la page 1 de la dernière édition de Broom's Legal Maxims, l'article traitant de l'expression maxim salus populi est suprema lex où l'on fait référence au passage du jugement du juge Buller dans l'affaire British Cast Plate, l'éminent auteur déclare: "Cette expression est basée sur l'accord tacite de chaque membre de la société pour que son propre bien-être personnel, en cas de nécessité, fasse place à celui de la communauté et que sa propriété, sa liberté et sa vie, en certaines circonstances, soient compromises ou même sacrifiées pour l'intérêt public."

@ p. 9 "Dans n'importe quelle affaire hypothétique de ce genre, on peut répondre aux revendications en disant que l'action a été commise par un agent qui tentait raisonnablement d'exécuter le devoir qui lui est imposé par la Police Act et le Code criminel, ce qui constitue, à mon avis, une apologie complète. Contrairement à la situation associée à la présente affaire, si un criminel en fuite se mêle à la foule et échappe à la vue de l'agent de police qui le poursuit, on n'admettrait pas que ce dernier fasse feu sur la foule dans l'espoir d'arrêter le criminel en fuite.

Dans les circonstances comme celles qui nous préoccupent, le problème n'est pas de déterminer quel principe de droit appliquer, mais plutôt de savoir de quelle façon appliquer ce principe."

@ p. 12 "Les pouvoirs exercés par l'agent de police sont, dans le sens, d'une nature similaire aux pouvoirs mentionnés par le juge Greene dans le passage tiré de l'affaire Fisher [1945] 1 B.R. 584. Si les circonstances sont telles que la législature a dû prévoir que l'exercice d'un pouvoir statutaire et l'exécution d'un devoir statutaire pouvaient porter atteinte aux droits privés, et si la personne, à laquelle le pouvoir est attribué et une fonction est imposée, agit raisonnablement, l'entrave en question n'engendrera pas de poursuite.

Je suis d'avis que ce que l'appelant a fait, dans la présente affaire, était raisonnablement nécessaire et pas plus, compte tenu des circonstances, pour empêcher la fuite et pour protéger les personnes dont la sécurité aurait été menacée si l'automobile en fuite avait atteint l'intersection de l'avenue Pape."

Selon nous, la majorité de la Cour suprême du Canada a maintenu, dans l'affaire Priestman, que la loi du royaume applicable aux responsabilités civiles des agents de police comprenait non seulement la loi générale de la négligence mais aussi le principe Waterfield. La Cour suprême du Canada n'a pas dit que la loi générale de la négligence ne s'appliquait pas aux agents de police, mais plutôt que l'ensemble de la loi du royaume reliée à leur imputabilité possible comprenait, non seulement la loi générale de la négligence, mais aussi un aspect supplémentaire ne s'appliquant pas seulement aux agents de police. Ainsi, les actes des agents de police n'allaient pas à l'encontre du Principe de droit.

Avant de conclure cette partie du document, il est important d'expliquer à nouveau la notion relative aux fonctions des agents de police et l'impossibilité de les définir exhaustivement. L'énoncé le plus concis de ce principe se trouve d'après nous dans le jugement de la Cour suprême relatif à l'affaire Schacht c. O'Rourke [1976] 1 R.C.S. 53. Dans cette affaire, le juge Spence, représentant la majorité, a fait l'exposé suivant, après l'étude des fonctions des agents de police (p. 15):

"Le juge d'appel Schroeder a saisi le problème avec netteté et clairvoyance, si je puis ainsi m'exprimer, lorsqu'il a déclaré:

Présentes au niveau municipal, provincial et fédéral, les forces de police exercent des pouvoirs visant à défendre l'ordre, la sécurité, la salubrité, les bonnes moeurs et le bien-être général de la société. Non seulement il est impossible, mais encore il est peu souhaitable d'assigner des limites rigides aux pouvoirs et fonctions des agents de police chargés d'exercer ces pouvoirs à l'égard des particuliers sur lesquels ils ont compétence et qu'ils doivent protéger. L'énumération des fonctions que la loi leur impose n'est point limitative. Il vaut infiniment mieux que les tribunaux décident dans chaque affaire qui leur est soumise, compte tenu de l'intérêt public, si la loi impose en l'espace certaines obligations à la police.

Après s'être référé à certains arrêts, aux dispositions législatives et aux éléments de la preuve, il concluait, ainsi qu'il suit:

Considérée d'un point de vue superficiel, la passivité des deux agents face au danger manifeste que présentait l'excavation insuffisamment protégée peut sembler être tout au plus une faute par abstention (non-feasance), mais dans le cas de fonctionnaires de l'État qui ne sont pas tenus à une simple obligation sociale, mais à ce que j'estime être une obligation légale, il s'agissait d'une omission équivalant à une exécution fautive (misfeasance). Les agents de la circulation ont les mêmes fonctions et obligations que celles qui incombent aux agents de police. Les obligations que je leur attribuerai découlent non seulement des lois pertinentes dont il a été fait mention, mais aussi de la common law qui reconnaît l'existence d'une obligation large, traditionnelle ou coutumière, à charge de la force de police en tant que prolongement de l'État, de protéger la vie, l'intégrité physique et les biens de l'individu.

C. Conclusions

- a) La règle de droit est toujours souveraine, en ce sens qu'aucun agent de la paix n'est en droit de violer la loi. Il est néanmoins entendu que les agents de la paix ont des attributions et, en rapport avec ces attributions, des pouvoirs dont les autres personnes ne sont pas investies.
- b) L'application judicieuse de la règle de droit, moyennant l'interprétation globale des lois courantes du royaume, démontre à l'évidence que le concept d'"antinomie inhérente" soutenu par la Commission McDonald est mal fondé.
- c) Comme prélude à l'examen de ce corps de lois, on doit tenter de vérifier les fonctions, attributions, droits et privilèges des membres du corps policier.
- d) "Non seulement il est impossible, mais encore il est peu souhaitable d'assigner des limites rigides aux pouvoirs et fonctions des agents de police": Schacht c. O'Rourke, supra, en application de la partie I du Principe Waterfield
- e) "Il est de loin préférable que les tribunaux, au fur et à mesure de l'examen des affaires dont ils sont saisis et compte tenu des exigences de chaque cas et des sauvegardes dictées par l'intérêt public, déterminent si, dans les circonstances en cause, la police remplit une fonction légitime." Schacht c. O'Rourke.
- f) Utiliser l'épreuve Waterfield pour savoir si un agent de police, s'acquittant d'une fonction ou d'un devoir qui lui sont assignés, agissait de façon légitime ou illégitime.

g) Pour appliquer l'épreuve Waterfield on doit:

I. Déterminer ce que l'agent de police faisait réellement et savoir tout particulièrement si son comportement constituait à première vue une entrave illégitime à la liberté ou du droit de propriété d'une personne donnée.

II. Dans l'affirmative, il serait pertinent de vérifier:

A) si le comportement en question s'inscrit dans le cadre global d'exécution d'une fonction imposée par la loi ou admise par la common law;

et

B) si le comportement en cause, bien qu'il s'inscrive dans le cadre global d'exécution de la fonction susmentionnée, a donné lieu à l'exercice, de façon injustifiable, des pouvoirs associés à cette fonction.

h) Dans le cadre de l'évaluation du comportement particulier de l'agent de police en fonction de l'épreuve Waterfield, on doit, d'entrée en jeu, préciser dans quelle mesure ce comportement constituait à première vue une entrave illégitime à la liberté ou du droit de propriété d'une personne donnée (Waterfield I). Si le comportement ne répond pas aux critères de Waterfield I, il sera réputé légitime et l'affaire sera close.

Si le comportement répond aux critères de Waterfield I, il faut vérifier s'il répond à ceux de Waterfield IIA. Dans la négative, il sera probablement réputé illégitime.

Si le comportement répond aux critères de Waterfield IIA, il faut vérifier s'il répond également à ceux de Waterfield IIB. Dans l'affirmative, il sera probablement réputé illégitime et dans la négative, il sera réputé légitime.

i) L'épreuve Waterfield présuppose une "entrave à la liberté ou au droit de propriété d'une personne", pour la raison que l'illégitimité invoquée dans cette affaire concernait ces deux aspects des libertés et droits. Il est d'autres activités policières, telles les fausses procédures d'identification et d'enregistrement, qui ne comportent pas nécessairement "une entrave à la liberté ou au droit de propriété d'une personne" mais qui néanmoins peuvent constituer à première vue des violations ou des infractions prévues par un statut.

Dans l'exposé des faits de l'affaire Waterfield, on lit (p. 47):

"En conséquence, s'il est indubitablement logique de dire, d'une manière générale, que les agents de police sont tenus, par devoir, de lutter contre le crime et, lorsqu'un crime est commis, de traduire les contrevenants en justice, il est également facile de déduire, en se fondant sur la jurisprudence, que lorsque l'exercice de ces fonctions générales comporte une entrave à la liberté ou au droit de propriété d'un particulier, les pouvoirs des gendarmes ne sont pas illimités."

À notre avis, ce paragraphe se prête au moins à deux interprétations. Il peut laisser à entendre que lorsque l'activité policière ne comporte aucune "entrave à la liberté ou au droit de propriété d'une personne", les pouvoirs associés à la fonction de l'agent de police chargé de lutter contre le crime n'ont pas la même portée. S'il en est ainsi, on pourrait déduire que dans une situation qui ne constitue pas "une entrave à la liberté ou au droit de propriété d'une personne" mais implique de prime abord une violation ou une infraction prévues par un statut (telles la fausse inscription sur un registre d'hôtel ou, à un niveau plus grave, certaines infractions touchant le fonctionnement de la justice), l'agent de police n'aurait qu'à prouver qu'il exerçait ses fonctions dans le cadre de la lutte contre le crime et qu'il a agi en toute bonne foi. D'autre part, il se peut qu'en examinant les faits dont il était saisi, le tribunal ait négligé ce genre de situation et, partant, ne se soit pas proposé de laisser entendre que les pouvoirs associés à cette affaire étaient limités uniquement i) à une fonction très vaguement définie (par exemple, la lutte contre le crime) et ii) au jugement subjectif de l'agent de police sur ce qui constitue une activité raisonnable. Il nous semble que la ligne d'action la plus sage est d'appliquer la deuxième partie des motifs de Waterfield à l'un et l'autre cas. Partant de ce principe, nous proposons que l'activité policière qui constitue de prime abord une violation ou une infraction prévue par la loi soit évaluée suivant les étapes A et B de l'alinéa II du paragraphe g) ci-dessus (même si cette activité ne comporte pas à première vue une entrave à la liberté ou au droit de propriété d'une personne).

- j) L'approche susmentionnée ne permettra pas toujours de vérifier par avance la légitimité du comportement des agents de police, toujours est-il qu'elle pourra être mise en oeuvre avec suffisamment de précision, de manière à aider les officiers de justice de la Couronne à recommander des lignes de conduite et à conseiller par avance le corps policier au sujet de chaque activité.

PARTIE III

1. SURVEILLANCE ÉLECTRONIQUE - LES AFFAIRES DASS/DALIA ET LE LITIGE SUR LE DROIT D'ENTRÉE

Avant même que paraisse le rapport de la Commission McDonald, et bien que les dispositions de la partie IV.I du Code criminel et l'article 16 de la Loi sur les secrets officiels réglementent l'interception légale des communications privées, des problèmes se sont posés concernant le droit de la police d'entrer dans une propriété privée afin d'installer, entretenir ou enlever des dispositifs d'interception. Il est évidemment essentiel de pouvoir le faire. C'est un cas qui se présente fréquemment lorsque la police a reçu d'un juge le mandat d'intercepter. L'opinion incidente du juge de la Cour d'appel du Manitoba dans le cas R. c. Dass [1979], 47 CCC (2d) 194, traduit peut-être pour la première fois les préoccupations des milieux judiciaires à ce sujet. Malgré l'opinion incidente exprimée à l'occasion du cas Dass, la plupart des ministres de la justice sont d'avis que le droit réside dans le mandat lui-même; ils appuient en partie leur façon de penser sur le cas Dalia c. les États-Unis, 441 U.S. 238, 47 U.S. Law Week 4423 [1979] auquel nous nous référerons par la suite.

La Commission MacDonald n'accepte pas la position de Dalia et de ce fait a conclu que le terme d'infractions qui s'applique à la violation de propriété, aux dommages, à l'entrée par effraction, pouvait aussi bien s'appliquer à "l'entrée subreptice" pour installer, entretenir ou enlever un dispositif électronique.

La Commission est allée en effet jusqu'à suggérer que la consommation même relativement faible du courant électrique dans les locaux en cause constituerait un vol, ou au moins un tort, et a proposé une recommandation particulière (#266) pour couvrir cette activité (voir paragraphe 7 ci-dessous).

La Commission a fait les recommandations suivantes:

"265. NOUS RECOMMANDONS QUE le paragraphe 178.13 du Code criminel soit amendé pour permettre aux agents de paix de se prévaloir des autorisations accordées en vertu de cet article pour prendre "les mesures raisonnablement nécessaires pour entrer dans les lieux ou pour enlever des biens aux fins d'examiner les lieux ou les biens avant d'installer un dispositif ou aux fins d'installer, d'entretenir ou d'enlever un dispositif d'interception, pourvu que le juge décernant le mandat précise dans le document

- a) les méthodes qui peuvent être utilisées aux fins de l'exécuter;
- b) qu'il ne faut pas causer aux locaux des dommages graves qui ne soient pas réparés; et
- c) que la force ni la menace de la force ne doivent être employées contre qui que ce soit."

Nous sommes conscients du sens de la Résolution adoptée à la Uniform Law Conference en 1979:

5. Conséquences du cas Dass

Attendu que les commissaires sont d'avis que l'article 25 du Code criminel et l'article 26 de la Loi d'interprétation constituent des autorités suffisantes pour éclairer les intentions de la Partie IV.I du Code selon lesquelles l'autorisation légale d'intercepter inclut l'autorisation d'entrer sur les lieux, d'installer, réparer, entretenir et enlever les dispositifs d'écoute, et

Attendu que les commissaires reconnaissent aussi que le cas Dass a suscité suffisamment de doute en ce domaine pour placer la police dans une situation d'incertitude,

Proposent que la Partie IV.I du Code criminel soit amendée de sorte que l'autorisation d'intercepter une communication privée soit considérée comme incluant l'autorisation d'entrer sur les lieux et d'installer, réparer, entretenir et enlever les dispositifs d'écoute, sous réserve des restrictions imposées par la Cour en vertu du sous-alinéa 178.13 (2) (d). Proposition adoptée (20-6).

Cependant, nous avons conclu qu'il n'est pas nécessaire actuellement de recourir à la législation. Nous pensons que les conclusions de la Commission McDonald ne sont pas réalistes, mais trop techniques, forcées, et, ce qui est le plus important, empreintes d'erreurs du fait que la Commission ne tient pas compte apparemment de l'épreuve Waterfield.

Depuis le rapport de la Commission, les tribunaux canadiens ont connu de nouveaux faits et la situation a évolué.

Dans le cas R. c. Lyons et al., BCCA, 21 juin 1982, le juge d'appel Hinkson a déclaré aux pp. 13 à 16:

"Dans le cas Goldman c. R. [1980] 13 C.R. (3d) 228, le juge McIntyre affirmait à la p. 250:

"Je suis pleinement d'accord avec le juge d'appel Brook dans ses commentaires cités plus haut, et je conviens avec lui que le cas R.c. LeSarge, supra, ne fait pas autorité pour décider que les mots "avec motif légitime" du sous-alinéa 178.16(1) (a) signifiait seulement une interception par mandat judiciaire. D'après le sous-alinéa 178.11(1), l'interception d'une communication privée au moyen des dispositifs décrits constitue une infraction tombant sous le coup de la loi. Le sous-alinéa 178.11(2) dispose que le sous-alinéa 178.11(1) qui crée l'infraction ne s'appliquera pas à une personne qui a le consentement exprimé ou sous-entendu de l'auteur de la communication privée ou de la personne qui doit la recevoir.

Ces décisions démontrent clairement que l'interception des communications privées est recevable en preuve, si cette interception se fait avec le consentement de l'auteur de la communication privée ou de la personne à laquelle elle est destinée. Si l'une de ces conditions est remplie, le sous-alinéa 178.16(1) (a) permet que cette interception serve à l'établissement de la preuve. Dans ce cas, la règle générale à laquelle le juge Martin s'est référé dans LeSarge, supra, est acceptable même si la police a commis violation pour installer un dispositif d'écoute dans une pièce, et la preuve est recevable.

La Cour d'appel du Manitoba dans le cas R. c. Dass [1979] 4 W.W.R. 97 est arrivée à cette conclusion. La cour en cette occasion a considéré un cas d'entrée subreptice de la police pour installer un

dispositif d'écoute dans une résidence. Le juge Huband, rendant le jugement de la Cour, déclarait (p. 115):

"Le fait qu'il y a eu violation de domicile ou quelque autre infraction civile ou même criminelle pour la mise en place de ce dispositif, n'invalide pas le mandat d'intercepter et ne rend donc pas l'interception illégale. Le mandat accordé par la cour est l'autorisation d'intercepter les communications privées. La façon dont ce mandat est exécuté n'a rien à voir avec la question de savoir si la preuve découlant de l'interception est recevable ou non. S'il y a eu une violation, ceux qui l'ont commise en seront responsables, soit en vertu des dispositions du Code criminel, soit en vertu des dispositions du Code civil."

L'avocat des appelants soutenait que la cour, dans le cas Dass, n'avait pas pris en considération le fait que le placement du dispositif avait constitué une violation continue aussi longtemps que ce dispositif était resté dans le lieu où il avait été placé par la police. L'avocat se basait sur la décision du juge Ritchie dans l'affaire Colet c. R. [1981] 19 C.R. (ed) 84. Dans ce cas, le juge Ritchie avait rendu le jugement de la cour et déclaré (p. 90):

"Il est exact que la résidence de l'appelant n'est rien de plus qu'une cabane ou un abri couvert que sans aucun doute la ville de Prince Rupert juge inapproprié. Cependant, ce que l'on considère ici, c'est le droit de longue date que détient un citoyen de ce pays de jouir de sa propriété comme il l'entend. Ce droit inclut celui de déterminer qui peut, ou ne peut pas y pénétrer."

Le juge continuait, p. 92:

"Comme je l'ai indiqué, je suis d'avis que toute disposition statutaire autorisant les officiers de police à envahir la propriété des autres sans invitation ni permission de leur part, constituerait, d'après la common law, un empiètement sur la propriété d'autrui; en cas d'ambiguïté, cette intrusion serait jugée selon une stricte interprétation de la common law en faveur des droits du propriétaire. Ceci apparaît clairement dans l'extrait suivant tiré de l'Interpretation of Statutes de Maxwell, 12^e édition [1969] pp. 251-252, où on lit:

"Les lois qui empiètent sur les droits du citoyen, qu'il s'agisse de la personne ou des biens, sont assujetties à une stricte interprétation comme le sont les lois pénales.

C'est une règle établie qu'elles doivent être interprétées, si possible, de façon à respecter ces droits, et s'il y a la moindre ambiguïté, l'interprétation en faveur de la personne doit être adoptée."

Sur la base de cette décision, les appelants soutenaient que le mandat n'entraînait pas ipso facto le droit d'entrer dans les locaux du 1207 avenue Nanton pour installer le dispositif de surveillance dans une pièce.

À mon avis, il est clair que les droits consentis dans le cadre de la Partie IV.I du Code sont ceux que le juge McIntyre a cités dans le cas Goldman. Cette partie du Code régit l'atteinte aux droits que constitue l'interception par la police de communications privées.

Lorsque, au cours de cette action, la police commet des actes abusifs, ces actes peuvent donner lieu à une procédure civile ou criminelle contre leurs auteurs. Cependant, ils n'entraînent pas la nullité de l'ordre de la cour autorisant l'interception. Par conséquent, la preuve est recevable conformément au sous-alinéa 178.16(1) du Code. Je n'accepterais pas cela comme moyens d'appel."

Dans un argument désigné comme suit: "Au sujet des demandes de mandats pour intercepter les communications privées conformément au sous-alinéa 178.12(1) du Code criminel, le juge McDonald de la Cour du Banc de la Reine d'Alberta a fait une communication écrite sur les raisons qui, lors du jugement du 24 septembre 1982, ont motivé sa décision d'autoriser d'intercepter des communications privées. Le mandat porte:

"À condition que cette autorisation ne soit pas interprétée comme le droit d'entrer dans un lieu d'habitation (qui ne soit ni un hôtel ni un motel) dans le but d'y installer ou d'y enlever un dispositif électromagnétique ou autre sans le consentement de l'occupant des lieux, et, s'il s'agit d'une chambre dans un hôtel ou un motel, sans le consentement du directeur ou de l'agent de sécurité, consentement qui sera suffisant."

Le juge McDonald continuait en citant largement des extraits de ses conclusions de commissaire à la Commission d'enquête McDonald pour soutenir le point de vue auquel il était arrivé; à savoir qu'un mandat d'interception non seulement n'autorisait pas implicitement l'entrée aux fins d'entretenir ou d'enlever une installation, mais qu'il fallait encore inclure un addendum en accord avec les déclarations ci-dessus, qui interdirait formellement une telle entrée.

Le cas Lyons est en voie d'être jugé à la Cour suprême du Canada. La Colombie-Britannique envisage une intervention auprès du gouvernement fédéral, ou au moins une explication avec ses représentants pour connaître la position précise que le procureur général adoptera à l'égard du problème Dass/Dalia. Votre Comité n'était pas assuré que la Cour suprême du Canada serait en mesure de régler ce problème, surtout si l'on tient compte du fait qu'une partie importante du jugement de la Cour d'appel de la Colombie-Britannique était, comme dans l'affaire Dass, une opinion incidente.

La demande de mandat dans le cas qui a donné lieu au jugement du juge McDonald, émanait à la fois du procureur général de l'Alberta et du procureur général du Canada. En dépit de la suggestion du juge McDonald qui espère que sa décision pourrait être clarifiée en appel, nous nous sommes persuadés que cette décision ne justifie pas pour la Couronne un droit d'appel.

Cependant, l'Alberta a référé les questions suivantes à la Cour d'appel de l'Alberta par décret du Conseil # 84/83 du 2 février 1983:

1. "Est-ce qu'un mandat donné par un juge en vertu de la Partie IV.I du Code criminel (Canada) autorise ipso facto toute personne l'exécutant à entrer en un lieu où l'on se propose d'intercepter les communications privées en vertu de ce mandat, afin d'y installer, contrôler, réparer ou enlever un dispositif électromagnétique, acoustique, mécanique ou autre?

2. Un juge a-t-il la compétence, en donnant un mandat sous couvert de la Partie IV.I du Code criminel du Canada d'autoriser expressément la personne exécutant le mandat à entrer en un lieu où l'on se propose d'intercepter des communications privées en vertu de ce mandat, pour y installer, contrôler, réparer ou enlever un dispositif électromagnétique, acoustique, mécanique ou autre?

Dans le cas The Queen c. Glesby, et al, (Co. Ct. Man.) du 19 juillet 1982, le juge Krindle déclarait, p. 6:

"Pour récapituler brièvement les faits, le 4 juin 1980, la police est entrée subrepticement au 60 rue Paramount, locaux commerciaux de Cando, pour y placer un microphone dans une pièce. Le 10 juin 1980, les policiers sont revenus, ont changé la fréquence du transmetteur, et, le 15 juin 1980, sont encore revenus et ont enlevé le transmetteur. Le 5 juin 1980, la police est entrée au 171 avenue Higgins, locaux commerciaux de Glesby, Cartage et Trucking, et ont placé un dispositif d'écoute dans le bureau. Le 6 juin, ils sont revenus et ont placé un transmetteur Vega dans l'édifice. Le 3 juillet, entrés à nouveau, ils ont changé la batterie du transmetteur. Le 15 septembre 1980, les microphones ont été enlevés. La difficulté de trouver une source de courant pour le transmetteur le 5 juin 1980 a nécessité une nouvelle visite le 6 juin avec une batterie. Le 3 juin 1980, la police est entrée au 1029 McPhillips et y a posé un transmetteur; à cette adresse, Cando y avait installé ses nouveaux locaux commerciaux. Le 7 juillet, nouvelle visite et installation d'un autre transmetteur; le 26 juillet, les policiers ont enlevé transmetteur et batterie. Le 9 juillet 1980, munis d'un mandat de perquisition, et pendant les heures de jour, ils se sont rendus à la résidence de Roy Glesby et ont installé deux appareils, un microphone à l'étage, un transmetteur au rez-de-chaussée. Ceux-ci ont été enlevés le 17 septembre 1980. Toutes ces entrées et chacune en particulier ont été effectuées, pour utiliser le terme américain, "covertly" et pour employer le terme canadien, "subrepticement". Toutes et chacune ont aussi été effectuées très habilement, rapidement et avec un minimum de dommage. L'habileté des policiers qui effectuent ces entrées

subreptices confond l'imagination. Mais cela est hors de cause, ce qui m'intéresse, c'est la question de l'entrée subreptice, et non de savoir si elle a été bien ou mal effectuée; peu m'importe que les policiers aient bâclé leur travail et mis vingt minutes à l'accomplir ou s'ils l'ont effectué correctement en trente secondes. Le problème, c'est encore l'entrée subreptice elle-même. Le mandat, document à l'appui 4, en vertu duquel ces entrées ont eu lieu, contient les indications suivantes: D'abord, il spécifie que les communications verbales peuvent être interceptées aussi bien que les télécommunications. Deuxièmement, au paragraphe 4, il décrit les lieux où les communications privées peuvent être interceptées: à savoir 1) une maison d'habitation 224 McAdam, 2) un local commercial au 171 Higgins, 3) un local commercial à Cando Sportswear Limited, 60 rue Paramount à Winnipeg, enfin, 4) tout endroit où les personnes désignées résident ou peuvent se trouver, ce qui couvrirait tous les déplacements de Kaye et Diamond du 60 rue Paramount au 1029 McPhillips.

Le paragraphe 6 du document à l'appui 4, déclare: "les personnes ayant reçu mandat par le présent document d'intercepter les communications privées peuvent entrer sur les lieux cités au paragraphe 4 pour installer, contrôler et enlever tout appareil électromagnétique, acoustique, mécanique ou autre dispositif, selon les nécessités qu'implique l'exécution dudit mandat. L'ordre a été donné le 29 mai 1980; il expirait à 15 h 59 le 27 juillet 1980. Chaque entrée, à l'exception de celles effectuées pour enlever les dispositifs à Glesby Cartage et à la résidence Glesby ont été effectuées dans les limites de temps prescrites au document à l'appui 4. En ce qui concerne les enlèvements à Glesby, j'en ai la preuve d'après un examen contradictoire de M. Prober à propos d'un autre mandat concernant une affaire différente, le mandat n'est venu à expiration que fin septembre. Je n'attache pas une extrême importance à la date d'enlèvement des microphones de Glesby. Je ne tiendrai pas compte non plus à ce sujet d'une conversation où j'ai appris du sergent Patrick qu'il aurait existé un autre mandat que je n'ai jamais vu. Je ne vais pas inférer à partir de ce témoignage qu'il y a eu infraction criminelle ou manque d'ordonnance. L'ordre judiciaire autorise l'entrée (document à l'appui 4).

Il ne donne pas de détails particuliers sur la nature de cette entrée. J'ai lu l'opinion incidente du juge Huband dans le cas Dass. J'ai lu les commentaires du juge Scollin sur la clause d'entrée du document à l'appui 4. À mon avis, la question de savoir si l'ordonnance a autorisé expressément une entrée subreptice ou si même la Cour a ou non le pouvoir d'autoriser une entrée subreptice est hors de propos.

Implicitement, accorder le droit d'écouter une conversation grâce à un microphone, c'est accorder le droit de faire les choses raisonnablement nécessaires pour implanter ce microphone. Les cas de perquisition et de saisies sont intéressants en ce qui les concerne, je veux dire au Canada. Mais alors que l'annonce d'une perquisition dans une résidence privée ne nuit ordinairement pas à l'efficacité de la perquisition ou de la saisie, il est ridicule de suggérer que la police doit prévenir les occupants de son intention de placer un microphone avant de le faire. Cet avertissement s'opposerait totalement aux buts que vise l'interception: obtenir des preuves.

À ce propos, j'ai examiné la loi américaine. On doit souligner que la constitution des É.-U. est bien plus précise que la nôtre en ce qui concerne l'ensemble des questions touchant aux droits de propriété. Malgré la spécificité de leur Constitution en ce domaine, dans le cas Dalia and The United States, qui a fait l'objet d'une relation à la 47 U.S. Law week, 4423, une décision du juge Powell, parlant au nom de la majorité, se lit ainsi: "Il n'est pas nécessaire lorsqu'on ordonne la pose d'un dispositif d'écoute téléphonique d'autoriser spécifiquement l'entrée subreptice pour procéder à l'implantation de ce dispositif. À la page 4428, Son Honneur déclare:

"Plus même, ce serait faire preuve d'un formalisme vide de sens de demander aux magistrats de préciser explicitement ce qui est sous-entendu sans aucun doute possible dans les autorisations de poser des microphones, à savoir qu'une entrée subreptice avec toutes ses interférences sur les considérations du 4^e amendement peut être nécessaire pour l'installation d'un dispositif de surveillance." Voir É.-U. et London... Nous concluons par conséquent qu'un ordre de surveillance électronique sous le titre III inclut une autorisation formelle d'entrer subrepticement dans les lieux que l'ordre décrit."

Dans le même ordre d'idées, j'attire votre attention sur le cas The United States and Scafide, 564 F. 2d, 633 (2 Cir. 1977) aux pages 639 et 640, dans lequel le juge itinérant Moore déclare:

"L'interprétation la plus raisonnable des ordres lorsqu'un juge donne mandat de poser un microphone dans des locaux privés est qu'ils impliquent l'approbation d'une entrée clandestine. En effet, tout ordre approuvant la surveillance électronique des conversations tenues dans un local privé particulier doit, pour être exécuté, comporter en lui-même l'autorité nécessaire pour effectuer la "saisie" des conversations."

Plus bas, sur la même page, il déclare:

"Et cette pose (d'un microphone dans une pièce) devra se faire subrepticement car aucun policier qui se respecte n'irait ouvertement demander une permission à l'occupant qu'il doit surveiller pour installer un microphone afin d'intercepter ses communications."

En ce qui me concerne, dans les cas américains, le raisonnement me paraît plein de bon sens, je note sa compatibilité avec l'alinéa 26(2) de la Loi d'interprétation du Canada. Je découvre en fait que les entrées effectuées, bien que subreptices, étaient limitées aussi bien en ce qui concerne leur nombre que leur objet; que les dommages ou les troubles causés étaient si minimes qu'ils passaient inaperçus des occupants, et que les entrées classées "clandestines" étaient décidées raisonnablement.

Je pense que, quelle que soit la façon dont l'ordre du Président de la Cour suprême (document n° 4) était formulé, il était implicitement admis, sinon explicitement, que la permission accordée pour placer un microphone afin d'intercepter les communications verbales, valait également pour les entrées clandestines et ne comportait aucune infraction ni du point de vue du code ni des dispositions de la charte concernant les réquisitions et saisies déraisonnables.

Je pense par conséquent que les interceptions répondent aux exigences du sous-alinéa 11(b) et qu'elles ont été faites de la manière prescrite dans le mandat."

Comme il est indiqué ci-dessus, nous pensons que la Commission McDonald suggère à tort que de nouveaux textes législatifs sont nécessaires. En dépit de la recommandation de la Uniform Law Commission en 1979 (décision à laquelle plusieurs d'entre nous ont pris part) nous ne sommes pas convaincus que la loi est appropriée à l'époque actuelle. Il peut se faire que l'interprétation judiciaire de la charte canadienne des droits permettra de penser que les textes législatifs seront appropriés dans un avenir plus ou moins proche. Comme nous l'avons indiqué dans la première partie, nous avons considéré cinq manières différentes d'aborder chacune des questions soulevées par le rapport de la Commission McDonald. Nous recommandons pour celle-ci de procéder par directives des procureurs généraux et du Solliciteur général du Canada à leurs agents désignés et par avis du procureur de la Couronne à la police. Nous avons considéré un certain nombre de situations de faits possibles, et nous présentons ci-dessous les réponses que nous recommandons à ces situations de fait:

Situations de fait possibles

1. Le juge indique qu'à son point de vue il n'est pas nécessaire d'inclure une disposition particulière concernant l'entrée aux fins d'installation, entretien ou enlèvement, et cela dans la mesure où il pense que la police peut entrer sans cette disposition particulière.
- 2) Le juge indique qu'à son avis, il est nécessaire qu'une disposition particulière du mandat permette à la police d'entrer pour installer, entretenir ou enlever un dispositif d'interception. L'avocat de la Couronne est d'accord et une telle clause figure dans le mandat.

Avis à la police

- 1) Entrez aux fins d'installer, entretenir ou/et enlever.
- 2) Entrez aux fins d'installer, entretenir ou enlever.

Situations de fait possiblesAvis à la police

4) Le juge indique qu'à son avis, il faut une autorisation particulière pour installer, entretenir ou enlever un dispositif d'interception, et il ne veut pas incorporer cette autorisation au mandat.

4) N'entrez pas

5) Le juge indique qu'il faut une autorisation particulière, qu'il ne l'inclura pas dans le mandat, qu'elle doit faire l'objet d'un document spécifique à joindre au mandat, que le mandat d'interception n'inclut pas l'autorisation d'entrer (comme le soutient le juge McDonald).

5) N'entrez pas

6) Demandes d'urgence

6. REMARQUE: Cette partie ne se rapporte qu'aux juridictions où le procureur général autorise la police à présenter des demandes de mandats d'urgence. Si la réponse du juge entre dans le cas des situations 1, 2, ou 3, entrez pour installer, entretenir ou enlever les dispositifs. Si la réponse du juge entre dans le cas des situations 4, ou 5, n'entrez pas.

La façon de voir suggérée dans les situations de fait 1, 2 et 3 est conforme à l'épreuve Waterfield et constitue un exemple spécifique de l'application en particulier de l'étape 11B de cette épreuve. Les décisions Dalia et Glesby mettent en évidence le fait que la procédure suggérée ci-dessous impliquera un usage justifiable des pouvoirs associés aux fonctions statutaires du policier chargé d'exécuter l'ordre du juge.

Dans les situations 4 et 5, l'avocat de la Couronne devra examiner chaque situation de fait et, selon le jugement de la Cour d'appel cité en référence, déterminera quelle sorte d'action devra être adoptée.

Chacune des recommandations suggérées ci-dessus est basée sur l'hypothèse que la personne demandant le mandat évaluera la situation de fait particulière qui sera ainsi créée et déterminera si oui ou non une entrée sera nécessaire pour installer, entretenir ou enlever un dispositif électronique. Lorsqu'à son avis, cette entrée s'impose, elle attirera verbalement l'attention du juge sur ce fait lorsqu'elle présentera sa demande.

2. DÉPLACEMENT D'UN VÉHICULE À MOTEUR OU D'UN AUTRE BIEN MEUBLE
DANS LE DESSEIN D'INSTALLER UN DISPOSITIF D'INTERCEPTION
EN VERTU D'UN MANDAT DÉCERNÉ AU TITRE DE LA PARTIE IV.I DU CODE
CRIMINEL

En plus des questions considérées à l'article 1 ci-dessus,
l'article 295 du Code criminel a sa place ici. Nous lisons:

"295. Est coupable d'une infraction punissable sur déclaration
sommaire de culpabilité, quiconque, sans le consentement du
propriétaire prend un véhicule à moteur ou un bateau, avec
l'intention de le conduire ou de l'utiliser ou de le faire
conduire ou utiliser."

À notre avis, la police devrait suivre les directives proposées aux
pp. 69 à 71 ci-dessus, avec pour résultat que: si (a) le mandat permet un
moyen d'investigation sur un véhicule à moteur et b) si l'on signale à
l'intention du juge qui donne le mandat, la nécessité de déplacer le
véhicule, et si la réponse du juge entre dans la catégorie des cas, 1, 2,
ou 3, la police peut alors déplacer le véhicule pour installer ce
dispositif; elle ne commettra pas une infraction en vertu de l'article 295
du Code criminel, ni aucune autre infraction en le faisant. L'essentiel de
l'infraction selon l'article 295 est l'enlèvement d'une voiture pour son
agrément et l'activité d'un policier qui déplace un véhicule sous couvert
d'un mandat conforme à la Partie IV.I et entrant dans la catégorie des cas
1, 2, 3, est bien différente. Ce qui est plus important, une application
appropriée du principe Waterfield indique que, même si l'activité est "à
première vue une entrave illégale au droit de propriété" (étape I), elle
fait clairement partie des fonctions imposées par le statut des policiers
(étape IIA) et constitue un emploi justifiable de ses pouvoirs associés à
ces fonctions (étape IIB).

En ce qui concerne l'accusation de vol présumée possible, nous sommes
assurés que si la procédure suggérée ci-dessus est suivie, l'intention
délictueuse exigée pour cette sorte d'accusation n'apparaît pas (voir
p. 80, infra). Une application de l'épreuve Waterfield ne révèle aucune
responsabilité à l'étape I en raison justement de ce manque d'intention
délictueuse. C'est la preuve qu'il n'y a pas "à première vue d'entrave
illégale au droit de propriété".

Dans Eccles c. Bourque et al [1975] 19 CCC 2d 129 (SRC), les policiers furent poursuivis en vertu du Code civil pour des dommages liés à la violation du domicile, lorsqu'ils étaient entrés de force dans l'appartement du plaignant afin d'appréhender une personne qui s'y trouvait, pensaient-ils. Les intimés s'appuyaient sur l'article 25 et alternativement sur leurs droits d'entrée d'après la common law. On n'a pas discuté le fait que si les policiers avaient trouvé la personne recherchée sur les lieux, ils auraient pu l'arrêter légalement. On n'a pas non plus débattu la question de savoir s'ils avaient des motifs raisonnables et probables de croire que la personne recherchée serait dans l'appartement. On a fait valoir en faveur des policiers intimés que d'après l'article 450 du Code, ils avaient été autorisés à procéder à l'arrestation et que, par conséquent, ils étaient autorisés à commettre une violation de propriété en vertu de l'article 25. La Cour a rejeté cette thèse et déclaré:

"Je ne peux accepter la prétention qu'une personne qui est, par l'art. 450 du Code criminel, autorisée à faire une arrestation soit, par l'article 25, autorisée par la loi à commettre une violation de propriété, en employant ou non la force, dans l'accomplissement de cette arrestation à condition qu'elle agisse en s'appuyant sur des motifs raisonnables et probables. L'article 25 n'a pas un sens aussi large. L'article 25 ne fait que permettre à une personne de faire ce qu'elle est obligée ou autorisée par la loi à faire dans l'application ou l'exécution de la loi, si elle agit en se fondant sur des motifs raisonnables et probables et à employer la force nécessaire à cette fin. La question était de savoir si les intimés étaient obligés ou autorisés par la loi à commettre une violation de propriété, et non comme leur avocat le soutient, de savoir s'il leur était enjoint ou permis de procéder à une arrestation. S'ils étaient autorisés par la loi à commettre une violation de propriété, la permission pour ce faire doit être trouvée dans la common law, car il n'y a rien dans le Code criminel."

La cour a néanmoins reconnu que les actions des policiers étaient justifiées en vertu des principes admis de la common law relatifs au droit d'entrer et de faire des investigations dans une maison d'habitation: résultat qui est compatible avec nos conclusions de la Partie I ci-dessus.

Nous contestons que le raisonnement de la Cour suprême du Canada lié à l'article 25 du Code criminel soit applicable aux questions soulevées dans cet article et à l'article 1 (pp. 59-70) ci-dessus. Nous ne prendrons pas à notre compte la supposition que lorsque le Parlement a institué le pouvoir d'arrêter (a. 450 du Code), il aurait du même coup implicitement autorisé une violation de propriété. Lorsque l'article 450 a été adopté, le Parlement ne songeait pas à une situation de fait spécifique où la violation de propriété s'avérerait nécessaire pour que les policiers puissent remplir leurs fonctions et arrêter la personne. Dans un mandat accordé en vertu de la Partie IV.1 où la nécessité de commettre "une violation de propriété" ou de déplacer un véhicule sans le consentement des propriétaires a été portée à l'attention du juge qui donne le mandat, nous nous trouvons devant une situation très différente.

Nous recommandons par conséquent de suivre la procédure exposée à l'article 1 (pp. 60-71) chaque fois qu'il est nécessaire de déplacer un véhicule ou un autre bien meuble afin d'installer un dispositif.

3. "ENTRÉE SUBREPTICE" SANS MANDAT

Nous ne sommes pas concernés par l'investigation menant à une arrestation ou à d'autres exemples reconnus (dans la loi canadienne) du pouvoir de la police d'entrer sans mandat. Nous sommes plutôt intéressés par la "nécessité" pour la police d'entrer subrepticement sans mandat, soit à l'étape d'investigation pour une enquête criminelle particulière ou pour recueillir des renseignements. Nous avons été avisés que la politique actuelle de la G.R.C. est celle qui a été énoncée dans une directive du Commissaire au début des délibérations de la Commission McDonald, à savoir qu'il ne devrait pas y avoir d'entrées subreptices sans mandat soit comme étape d'une enquête criminelle particulière ou pour recueillir des renseignements. Nous avons aussi été avisés que le commissaire avait décidé qu'il continuerait à appliquer cette directive à la G.R.C. jusqu'à ce qu'on puisse la remplacer par un texte législatif.

Nous décrivons ci-dessous deux sortes de situations factuelles différentes:

- a) Une entrée que la police veut faire à titre d'étape dans une enquête criminelle spécifique afin, par exemple, d'observer ou de marquer des marchandises pour plus tard les retracer ou afin de prendre des photos qui seront utilisées par la suite comme preuve. Les policiers n'ont pas le désir de saisir à un moment donné les marchandises qu'ils voient dans les locaux et selon les dispositions existantes du Code criminel à ce sujet, l'investigation et la saisie ne sont pas appropriées.
- b) Une entrée que la police veut faire pour recueillir des renseignements touchant le domaine pénal sans que ce projet soit relié à une enquête spécifique.

Nous croyons qu'une entrée du type cité dans le paragraphe a) ci-dessus peut constituer pour la police une étape légitime d'investigation, mais il faut d'abord pour cette étape que le juge ait donné son approbation; à cette fin, il faut soumettre au Parlement des textes législatifs appropriés.

Nous ne jugeons pas à propos de faire des commentaires sur b) soit en relation avec la recherche d'information pour le service des renseignements touchant à la sécurité nationale ou au domaine pénal. Tout dépend des délibérations sur le contenu de la loi nationale de renseignements pour la sécurité, présentée par le gouvernement fédéral le 18 mai 1983.

4. LA VIOLATION DE PROPRIÉTÉ (CODE CIVIL) (LES LOIS PROVINCIALES ET LA VIOLATION DE PROPRIÉTÉ)

- (i) Terre-Neuve - La simple violation de propriété ne désigne que la violation portant sur des locaux commerciaux ou des établissements d'enseignement, après que notification ait été faite de ne pas pénétrer dans les lieux. La notification inclut les signes. (Petty Trespass Act, Statuts de Terre-Neuve 1975-1976, c.59)
- (ii) I.-P.-É. - Pas de lois à ce sujet
- (iii) N.-B. - Pas de lois à ce sujet
- (iv) N.-É. - Pas de lois à ce sujet
- (v) Québec - C'est une infraction d'entrer sur les terrains sans la permission du propriétaire (Loi sur les abus préjudiciables à l'agriculteur (Statuts du Québec C.A.-2, Division II). Il faut faire une exception si la violation est commise "dans l'exercice de quelque devoir imposé par la loi".
- (vi) Ontario - Il n'y a pas infraction si le présumé délinquant agit sous couvert d'un droit ou d'un pouvoir conféré par la loi (Petty Trespass Act, Statuts de l'Ontario, 1980, c.15)
- (vii) Manitoba - Il y a infraction en cas d'entrée sur des terrains ou en des lieux entièrement clôturés, ou des terrains ou des lieux qui ont été interdits à la personne qui a commis la violation de propriété. (Petty Trespass Act, Statuts du Manitoba c.P. 50)
- (viii) Saskatchewan - Pas de lois à ce sujet
- (ix) Alberta - C'est une infraction d'entrer sur des terrains si la défense a été faite, soit verbalement, soit par signes. (Petty Trespass Act, Statuts de l'Alberta c.P-6)
- (x) C.-B. - C'est une infraction de se trouver à l'intérieur d'une propriété clôturée sans y avoir été autorisé. La loi semble viser la protection des terres cultivées. (Trespass Act, S.R.B.C. 1979-c.411)

On trouvera à l'annexe D ci-jointe, des copies des lois auxquelles nous nous référons. Nous devrions peut-être ajouter qu'en dehors de la loi citée, il semble clair au Québec qu'une action basée sur une prétendue violation de propriété n'aboutira que si l'on peut établir qu'elle a provoqué des dommages matériels.

Nous ne sommes pas sûrs de pouvoir donner un avis autorisé en ce qui concerne la responsabilité civile des officiers de police dans le contexte où cette question se pose dans le Rapport de la Commission McDonald. (Il est probable qu'aucun juriste n'aurait la compétence voulue pour fournir un avis décisif en dehors d'une situation factuelle définie). Nous croyons cependant que notre opinion, s'appuyant sur les possibilités d'application des articles définissant l'infraction dans les lois provinciales sur la violation de propriété, peut au moins tracer la voie en fournissant une réponse en ce qui concerne la responsabilité civile en ce domaine.

Comme il est indiqué dans la déclaration de principe des procureurs généraux des provinces à l'assemblée fédérale-provinciale des procureurs généraux, du 23 au 25 novembre 1981, la Commission McDonald semblait négliger des articles, comme l'article 2 de la Trespass to Property Act., Ontario, Statut de l'Ontario, 1980, chapitre 511, qui exempte les personnes agissant en vertu d'un droit ou d'un pouvoir conféré par la loi, comme le précise l'article sur l'infraction.

Nous ne voyons pas la nécessité de changer les textes législatifs en ce domaine et soutenons respectueusement que le principe Waterfield qui est étudié dans toute son étendue dans la Partie I ci-dessus constitue une protection suffisante contre les poursuites qui pourraient être déclanchées contre les officiers de police de la manière décrite dans la Partie I ci-dessus.

5. INFRACTIONS 1) ENTRÉE-EFFRACTION, 2) VOL, 3) MÉFAIT, 4) INTRUSION DE NUIT, 5) POSSESSION D'INSTRUMENTS POUVANT SERVIR AUX EFFRACTIONS DE MAISON, ET 6) COMLOT EN VUE DE COMMETTRE UNE INTRUSION

Nous ne voyons pas la nécessité de faire des lois en ce domaine. Ce chapitre couvre une vaste gamme d'infractions criminelles très importantes et mérite d'être examiné très soigneusement. Il occupait une grande place du volumineux Rapport McDonald. Nous sommes prêts bien entendu à en parler plus en détail par la suite, mais pour garder notre rapport aussi concis que possible, nous pensons que pour l'instant, nous en avons dit suffisamment pour confirmer ce qui a été déclaré dans le rapport original de votre comité interprovincial (annexe A). La Commission McDonald a négligé d'étudier correctement les éléments essentiels des infractions en cause. En particulier, les Commissaires ont confondu mobiles et intentions et ne se sont pas attachés à reconnaître la nécessité d'une preuve positive de l'intention requise. Nous estimons que ces considérations suffisent pour l'instant. Nous pensons en effet que les conclusions de la Commission à ce sujet sont sérieusement erronées.

C'est un domaine où chaque situation de fait doit être étudiée en particulier et l'épreuve Waterfield doit s'appliquer. Dans chaque cas, il faudra déterminer si "à première vue il existe une entrave illégale au droit de liberté ou de propriété d'une personne" (étape I), et, dans ce cas, si les mesures que l'on a décidé de prendre "cadrent avec la portée des devoirs imposés par la loi ou reconnus par la common law (étape IIA) ou si elles "relèvent d'un usage abusif des pouvoirs associés à ces devoirs" (étape IIB).

6. RECHERCHE OU SAISIE OU RECHERCHE ET SAISIE D'ARTICLES (NON PRÉVUS PAR UN MANDAT DE PERQUISITION) ALORS QUE LA PRÉSENCE DE L'AGENT DE POLICE SUR LES LIEUX EST LÉGITIME

Par l'expression "légalement sur les lieux", nous nous référons à:

- a) une perquisition faite en vertu de l'article 443;
- b) une perquisition en vue d'une arrestation;
- c) une entrée selon la Partie IV.I
- d) des perquisitions faites en vertu d'autres lois fédérales
- e) des perquisitions faites en vertu d'autres dispositions du Code criminel.

Archbold expose la position de la common law dans son livre Criminal Pleading Evidence and Practice, 40^e édition [1979], p. 916:

"Lorsque des policiers entrent au domicile d'une personne en vertu d'un mandat, ou arrêtent un homme légalement, avec ou sans mandat, c'est une loi établie que ceux-ci sont autorisés à prendre tout article trouvé en sa possession ou à son domicile s'ils croient, pour des motifs raisonnables, que le dit article constitue une preuve déterminante en rapport avec le crime pour lequel ils ont effectué l'arrestation ou la perquisition. Si, au cours de la perquisition, ils trouvent d'autres objets indiquant que cette personne est impliquée dans un autre crime, ils peuvent les saisir pourvu qu'ils agissent raisonnablement et qu'ils ne les retiennent que le temps nécessaire: voir *Pringle c. Bremner et Stirling* [1867] 5 Macpherson's H.L. cas. 55, 60; *Chic Fashions (West Wales) Ltd c. Jones* [1968] 1 ALL E.R. 229 et *Garfinkel et Autres c. Metropolitan Police Commissioner* [1972] Crim. L. R. 44 (Ackner J.)"

Dans son exposé au gouvernement fédéral, en réponse au rapport de la Commission McDonald, M. Wright, de Land, Michener, conclut qu'on peut correctement soutenir que tout mandat ou toute autorisation, permettant à un officier de paix de se trouver légalement sur les lieux, l'autorise également à prendre des biens qui témoignent de la perpétration d'un

crime, même s'ils n'ont aucun rapport avec l'objet du mandat. Il cite, à cet égard, M. Diplock L.J., dans l'affaire Chic Fashions, supra, p. 237:

"La seule utilité du mandat de perquisition, c'est qu'il a rendu légale l'entrée de la police, et la question était de savoir si, en vertu de la common law, un policier se trouvant légalement sur une propriété privée, était autorisé, sans la permission de l'occupant, à saisir et à emporter des objets se trouvant en possession de celui-ci, lorsque ce policier croyait, pour des motifs raisonnables, que ces objets avaient été volés, et à les conserver comme pièces à conviction."

Dans l'affaire Paroian, Courey, Cohen & Houston contre La Reine [1981] 29 O.R. (2d) 471 (C.A.) p. 482, le juge d'appel Morden a dit devant la Cour:

"Sans doute, les dispositions de la loi (sous-alinéa 231(4) de la Loi de l'impôt sur le revenu) visent avant tout à permettre une perquisition afin d'obtenir des preuves de l'infraction que l'on a des motifs raisonnables et probables de soupçonner; en outre, cette autorisation permettra éventuellement de faire une perquisition et de saisir des preuves concernant d'autres infractions. La loi n'exige pas en ce cas que l'on présente une nouvelle demande d'autorisation, et cela, à plusieurs reprises. Il est possible que cette stipulation, particulièrement dans un domaine limité aux infractions à la loi de l'impôt, ne dévie pas considérablement des principes de la common law (Chic Fashions (West Wales) Ltd c. Jones, [1968] 2 Q.B. 299) ni des dispositions statutaires (Code criminel, art. 445) qui permettent, dans certains cas, de saisir plus de choses que n'en désignait le mandat de perquisition."

En ce qui concerne les perquisitions faites en vertu de l'article 443 du Code criminel, la position de la common law se trouve codifiée dans l'article 445, en ces termes, avec plus d'insistance:

"Quiconque exécute un mandat décerné en vertu de l'article 443 peut saisir, outre ce qui est mentionné dans le mandat, toute chose qu'il croit, pour des motifs raisonnables, avoir été obtenue au moyen d'une infraction ou avoir été employée à la perpétration d'une infraction, et peut la transporter devant le juge de paix qui a décerné le mandat ou quelque autre juge de paix pour la même circonscription territoriale, afin qu'il en soit disposé conformément à l'article 446."

(souligné à dessein)

Nous croyons qu'il est nécessaire d'uniformiser les articles 445 et 443(1) du Code criminel. L'article 443(1) dispose qu'un mandat de perquisition sera lancé pour trois types d'objets, tandis que le libellé de l'article 445 ne semble en englober, tout au plus, que deux de ces trois types. Il faudrait modifier l'article 445 de façon à ce qu'il touche les trois types d'objets visés par l'article 443.

Dans Ghani c. Jones, (supra), Lord Denning a déclaré (p. 1705):

"Il faut tenir compte de l'intérêt de la société en général, lorsqu'on tente de démasquer les malfaiteurs et de réprimer le crime. Les citoyens honnêtes devraient aider les policiers et ne pas les entraver dans leurs efforts pour découvrir les criminels. Compte tenu de ces considérations, j'aurais dû penser que, pour justifier la saisie d'un objet, quand personne n'a été arrêté ni accusé, il faut que les conditions suivantes aient été remplies:

1. Les policiers doivent avoir des motifs raisonnables de croire qu'un délit grave a été commis...
2. Les policiers doivent avoir des motifs raisonnables de croire que l'objet en question représente soit le produit du crime ou l'instrument avec lequel le crime a été commis, ou encore une preuve tangible de la perpétration du crime.
3. Les policiers doivent avoir des motifs raisonnables de croire que la personne en possession de l'objet a elle-même commis le crime, y est impliquée, ou a été complice d'une façon ou d'une autre, sans y avoir directement participé, ou en tout cas, que le refus qu'elle oppose est absolument injustifiable.
4. Les policiers ne doivent pas retenir l'objet, ni empêcher sa restitution, pendant plus longtemps qu'il n'est vraiment nécessaire pour leur permettre de terminer leurs recherches, ou de s'en servir comme preuve à conviction...

5. La légitimité de la conduite des policiers doit être jugée au moment de la perquisition, et non d'après ce qui arrive par la suite.

Nous pensons qu'il y aurait lieu ici de prendre des mesures législatives pour permettre d'accorder par téléphone un mandat de perquisition afin de résoudre les cas où les pouvoirs conférés à la police en vertu de la common law ne justifient pas la saisie sans mandat d'objets utiles à l'enquête. Par exemple, si un mandat de perquisition est émis, en vertu de l'article 443, relativement à un vol présumé de téléviseurs ou à la possession de téléviseurs volés, le mandat constitue en lui-même une autorité suffisante pour fouiller les lieux où l'on aurait pu cacher un ou plusieurs téléviseurs, de même que les lieux pouvant recéler des factures ou d'autres documents témoignant du vol ou de la possession de téléviseurs. La saisie d'une arme à autorisation restreinte trouvée par un policier sur une table ou un bureau peut être justifiée en vertu de l'article 445 ou de la common law. Par ailleurs, elle peut également être justifiée si le policier, au cours de sa recherche pour trouver, et, ensuite, saisir des documents prouvant la possession de téléviseurs volés, ouvre un tiroir et y découvre une telle arme.

Cependant, la possibilité de s'appuyer sur l'article 445 du Code criminel se limite aux situations où l'agent de la paix se trouve sur les lieux, en application de l'article 443 du Code criminel; mais cet agent ne peut pas toujours se fier à son jugement personnel pour conseiller à l'avance les policiers sur ce qu'il convient de faire. Nous recommandons donc que toute décision finale concernant la nécessité d'une loi en ce domaine soit remise à plus tard, jusqu'à ce qu'on ait reçu et analysé les recommandations à ce sujet de la Commission de réforme du droit du Canada, recommandations présentées en vue de la révision du Code criminel. Ces recommandations doivent porter sur les pouvoirs des agents de la paix chargés de faire des perquisitions et des saisies, et elles nous intéressent dans la mesure où elles peuvent suggérer la création d'une procédure permettant à un agent de la paix d'obtenir un mandat par

téléphone lorsqu'il se trouve légalement sur les lieux, mais ne sait s'il est habilité à rechercher et à saisir des articles supplémentaires. (La Commission de réforme du droit étudie également la possibilité de recourir aux mandats obtenus par téléphone dans des situations de fait où les policiers ne se trouvent pas sur les lieux et n'ont pas le temps d'obtenir un mandat de la façon habituelle.)

7. VIOLATIONS PRÉSUMÉES D'AUTRES LOIS (PAR EXEMPLE, VOL DU COURANT ÉLECTRIQUE (ART. 287 DU CODE CRIMINEL) ET DU CODE DU BÂTIMENT, ETC.)

Nous avons considéré le fait que l'on retrouve la conjonction "ou" dans l'article 287 du Code criminel, et la conjonction "et" dans l'article 283. Nous avons conclu que le sous-alinéa 287 (1) (a) devrait être interprété de la même façon que l'alinéa 283 (1).

Nous avons également conclu - et cela a peut-être encore plus d'importance - qu'une certaine sorte d'activité que la Commission McDonald considère comme pouvant être illégale (par exemple, le vol de courant électrique par un agent de la paix qui installe un dispositif d'interception après avoir reçu une autorisation légale accordée en vertu de la Partie IV.I du Code Criminel, est contraire à l'article 287) ne peut pas, si on en fait une interprétation sensée, être considérée comme "frauduleuse ou sans apparence de droit"; nous sommes par conséquent arrivés à la conclusion qu'il importe peu que la conjonction "ou" ait été employée au lieu de "et" dans l'article 287.

Quoi qu'il en soit, on peut réfuter toutes les conclusions auxquelles la Commission McDonald est parvenue dans ce domaine, par une application correcte du principe de Waterfield; l'adoption d'une nouvelle loi devient par conséquent inutile, de même que toute nouvelle directive ou recommandation destinée à l'avocat de la Couronne ou au corps policier.

8. DIVULGATION DE COMMUNICATIONS PRIVÉES INTERCEPTÉES À DES AGENTS DE LA PAIX ÉTRANGERS

Bien que les sous-alinéas 178.2 (2) (b) et (e) autorisent probablement une telle divulgation, dans les cas où un agent de la paix canadien, agissant sous sa propre responsabilité, veut divulguer certains renseignements, il ne convient pas d'établir des directives ou règles générales destinées aux policiers, sauf pour leur demander d'examiner chaque affaire de concert avec l'avocat de la Couronne, au préalable, afin de déterminer si les dispositions de la Partie IV.I du Code mentionnées ci-dessus sont applicables.

Aucun changement législatif n'est requis. Il faudrait conseiller au corps policier de consulter l'avocat de la Couronne.

9. VIOLATION PRÉSUMÉE PAR LA GRC DE L'ARTICLE 178.2 (DISSIMULATION DES FAITS CONNUS) DANS SES RAPPORTS AUX PROCUREURS GÉNÉRAUX PROVINCIAUX QUI SOUMETTENT DES RAPPORTS ANNUELS AU CORPS LÉGISLATIF

L'infraction commise en vertu du sous-alinéa 178.2(1) concerne les "communications privées", non les "interceptions" ou les "mandats". Les obligations relatives au rapport annuel, aux termes de l'alinéa 178.22, concernent ces derniers. Par conséquent, la suggestion de la Commission McDonald, voulant qu'une application conforme de l'alinéa 178.22 soit équivalente à une infraction en vertu de l'alinéa 178.2, n'a aucune valeur. Aucune mesure spéciale n'est donc nécessaire.

10. LE COMITÉ DE RÉVISION INDÉPENDANT

La Commission McDonald a recommandé la création d'un comité, dont les membres seraient nommés conjointement par les gouvernements fédéral et provinciaux, et qui serait chargé d'examiner la façon dont les agents de la paix exercent leurs pouvoirs en matière de surveillance électronique (ainsi que certains autres). La Commission a recommandé que le comité soit composé "de deux juges, de deux juristes et de deux citoyens (dont un, par exemple, serait membre actif d'une organisation vouée à la défense des libertés civiles)"; ce comité "examinerait les documents présentés à l'appui des demandes d'autorisation judiciaire, les ordonnances elles-mêmes, les autres possibilités qui s'offraient à la police, les résultats du travail d'enquête dans la mesure où ce travail était facilité par les moyens ayant fait l'objet d'autorisation judiciaire, et le reste."

Nous croyons que cette recommandation est totalement inacceptable, car elle signifie qu'un comité de personnes nommées par le service administratif du gouvernement devrait réviser des décisions judiciaires.

La Commission de réforme du droit du Canada étudie actuellement la possibilité de modifier le libellé de l'alinéa 178.22 qui traite de la responsabilité du Solliciteur général du Canada et des procureurs généraux des provinces vis-à-vis du Parlement fédéral et des assemblées législatives provinciales respectivement. Nous croyons qu'il faudrait modifier les termes précis concernant les statistiques exigées dans ces rapports.

11. VÉRIFICATION DU COURRIER

La Commission McDonald a recommandé que les agents de la GRC soient autorisés par voie législative à examiner ou à photographier un pli postal et à ouvrir le courrier, afin de faire l'examen ou l'essai de toute substance qui peut s'y trouver, mais seulement après avoir reçu une autorisation judiciaire, sous réserve de garanties identiques à celles que prévoit maintenant la Partie IV.I du Code Criminel, et seulement à l'égard d'infractions portant sur les stupéfiants et les drogues.

Nous convenons qu'il est nécessaire d'adopter une mesure législative, de même qu'il est nécessaire d'obtenir l'autorisation judiciaire avant de procéder à la vérification du courrier, c'est-à-dire de l'ouvrir, le saisir, le retourner ou de remettre en place son contenu, et d'en contrôler la distribution. Nous ne croyons pas cependant qu'une telle procédure devrait être limitée aux "infractions portant sur les stupéfiants et les drogues" ni utilisée uniquement par les agents de la GRC.

12. ACCÈS DE LA POLICE AUX RENSEIGNEMENTS CONFIDENTIELS

Nous constatons que les nouvelles mesures législatives fédérales sur l'accès à l'information et la protection de la vie privée demandent qu'un comité parlementaire examine toutes les lois fédérales qui touchent à cette question. En attendant le rapport de ce comité, nous croyons qu'il faudrait établir une procédure qui permettrait aux corps de police d'avoir accès à la plupart, sinon à tous les renseignements confidentiels conservés par les organismes privés et publics, conformément aux lois fédérales et provinciales. Nous croyons que les policiers devraient obtenir une autorisation préalable avant de faire une vérification. Nous ne croyons pas cependant qu'une procédure semblable à celle prévue dans la Partie IV.I du Code criminel soit nécessaire.

La majorité des membres du comité appuient l'idée d'une procédure destinée à obtenir une autorisation préalable d'un juge d'une cour provinciale, sur une demande à l'insu de la partie adverse, du moins en ce qui concerne la divulgation de renseignements conservés conformément aux lois provinciales. En raison de la situation spéciale touchant à la Loi de l'impôt sur le revenu, les représentants fédéraux du comité n'ont pu prendre de décisions à ce moment.

13. SURVEILLANCE PHYSIQUE

Il existe actuellement un certain nombre de directives destinées à instruire les policiers sur ce qu'ils doivent faire dans l'exercice de leurs fonctions, chaque fois que les lois provinciales relatives aux véhicules automobiles et à la circulation routière sont mises en cause. Ces lois varient d'une province à l'autre, mais il suffit peut-être de dire qu'à l'exception possible du Québec, du Nouveau-Brunswick et du Yukon, les défenses et les exemptions statutaires ne couvrent pas toutes les activités policières légitimes qui peuvent, superficiellement, sembler constituer à première vue une infraction présumée au code de la route. La surveillance physique exercée par un policier conduisant un véhicule automobile, pourrait, selon les termes de l'épreuve Waterfield constituer "à première vue une entrave illégale à la liberté ou au droit de propriété d'autrui" ou "un abus de pouvoir présumé" (voir la page 58 ci-dessus), bien que d'après l'étape 2 de l'épreuve Waterfield, il ne s'agisse que d'une activité légale.

On trouvera à l'annexe D les lois provinciales intéressantes pour notre sujet. Il faudrait porter une attention particulière au Code de sécurité de la route du Québec, à la Loi sur la police du Nouveau-Brunswick, de même qu'à l'Ordonnance sur les véhicules automobiles du Yukon.

La Commission McDonald a fait les recommandations suivantes:

"NOUS RECOMMANDONS, pour permettre la bonne exécution des opérations de surveillance par le service de renseignements pour la sécurité, QUE l'on apporte aux lois fédérales, et que l'on demande aux provinces d'apporter aux lois provinciales, les modifications suivantes:

(1) Le code de la route

- a) Qu'un moyen de défense soit prévu dans les codes provinciaux de la route à l'intention des agents de la paix et des personnes que désigne le procureur général de la province sur l'avis du Solliciteur général du Canada ("personnes désignées"), si ces personnes agissent

- 1) raisonnablement dans toutes les circonstances;

- ii) en tenant compte, comme il se doit, des biens et de la sécurité personnelle d'autrui; et
 - iii) dans l'exercice de leurs fonctions par ailleurs licites;
- b) qu'un moyen de défense semblable à celui exposé en a) ci-dessus soit prévu dans les lois provinciales pertinentes autorisant les règlements municipaux de circulation;
- c) que chacune des provinces et chacun des territoires adopte, pour la protection des agents de la paix et des personnes désignées, une disposition les mettant à couvert d'aucune responsabilité personnelle dans les poursuites au civil, si ces personnes agissent
 - i) raisonnablement dans toutes les circonstances;
 - ii) en tenant compte, comme il se doit, des biens et de la sécurité personnelle d'autrui; et
 - iii) dans l'exercice de leurs fonctions par ailleurs licites;
- d) que le gouvernement du Canada dédommage les personnes qui, sans la recommandation c) ci-dessus, auraient droit à réparation dans une action civile engagée contre un agent fédéral de la paix ou une personne désignée, dans une action judiciaire découlant d'actes commis ou omis par ledit agent ou ladite personne dans le cours de son travail, en s'inspirant du principe selon lequel le montant de la réparation devrait être établi comme cela se pratique dans les tribunaux civils.

Nous avons considéré les possibilités suivantes:

1. Pour les policiers, une exemption d'une portée générale comme celle incluse dans la Loi sur la police du Nouveau-Brunswick, paragraphe 3(4).
2. Une exemption statutaire des interdictions du Code de la route en ce qui concerne toutes les activités policières, légitimes et nécessaires, sur les routes.
3. Un examen, dans chaque province, des lois du Code de la route, en vue de déterminer s'il est nécessaire d'apporter des amendements à ces lois pour qu'elles s'adaptent à une juste application du principe de Waterfield afin qu'un policier puisse remplir ses fonctions dans toutes les circonstances où le Code de la route peut constituer un obstacle.

Nous sommes arrivés à la conclusion que la proposition n° 1 n'était pas appropriée. Nous croyons que chaque province devrait considérer avec soin la proposition n° 2 et adopter, soit cette façon de procéder, soit celle du n° 3.

14. LA FAUSSE IDENTIFICATION

La Commission McDonald a recommandé que les lois provinciales relatives à l'inscription dans les hôtels soient modifiées de manière à établir un moyen de défense à l'intention des policiers dans l'exercice de leurs fonctions. Nous recommandons également que ces lois soient modifiées, mais de façon à établir clairement que le fait, pour un policier, de s'inscrire sous un faux nom ne constitue pas une infraction, plutôt que de lui offrir un moyen de défense pour cette infraction.

La Commission McDonald a suggéré que le fait de créer, de fournir et d'utiliser des documents tels que permis de conduire, permis d'enregistrement des véhicules automobiles, certificats de naissance, cartes d'assurance-chômage, cartes d'assurances sociales, sous une fausse identité, constituait une infraction possible au Code criminel et aux lois provinciales et fédérales appropriées, régissant la création et la délivrance de tels documents.

Nous avons considéré les suggestions de la Commission McDonald, à savoir que ces activités constituaient des infractions possibles au Code criminel et nous les avons rejetées. Nous convenons cependant qu'elles pourraient être une infraction aux lois autorisant la création, la délivrance et l'utilisation de ces documents. En ce qui concerne ces lois, nous avons examiné les possibilités suivantes:

- a) la création d'une loi prévoyant une exemption;
- b) la création d'une loi prévoyant une autorisation judiciaire préalable; et
- c) la création d'une loi prévoyant l'approbation ministérielle préalable.

Nous avons conclu que l'approbation ministérielle constituerait la meilleure garantie. Il faut cependant faire une analyse plus poussée pour préciser le mécanisme qui permettra d'atteindre notre but. En ce qui concerne les lois provinciales régissant la création, la délivrance et

l'utilisation de ces documents, il pourrait être utile d'amender les lois provinciales sur la police. Cet amendement prévoirait une autorisation ministérielle pour obtenir une exemption aux conditions qu'elles exigeraient.

Cependant, ce ne sont pas toutes les lois provinciales concernées, qui ont besoin d'être amendées. Par exemple, il est possible que la création et la délivrance d'un faux permis de conduire ou d'un permis en blanc, et son utilisation ultérieure (avec un nom ajouté en grosses lettres par la suite si le permis a été créé et délivré en blanc), peut ne pas constituer une infraction présumée aux lois provinciales. En Ontario, de tels permis ont été produits, délivrés, utilisés et ensuite retournés sur la base d'une autorisation ministérielle. (Voir l'annexe C)

En ce qui concerne les lois fédérales parallèles, il ne suffirait pas de modifier la Loi sur la GRC, car les forces policières municipales et provinciales doivent également avoir accès aux documents relevant des lois fédérales.

Il serait également prudent d'examiner de façon plus approfondie la question de la création et de l'utilisation des documents émis par le secteur privé (par exemple, les cartes de crédit, les cartes de membres des syndicats), du moins dans la mesure où ces documents peuvent comporter une responsabilité civile.

15. FALSIFICATION, FAUX SEMBLANT, USURPATION DE NOM OU DE FONCTION ET
INTIMIDATION

Nous ne croyons pas qu'il soit nécessaire d'adopter des mesures législatives ou administratives à la suite des conclusions de la Commission McDonald touchant ces infractions. Nos conclusions sont identiques à celles exposées au n^o 5 ci-dessus.

16. LE REVENU DES AGENTS DE POLICE AUX FINS D'IMPÔT

Nous croyons que l'adoption d'une loi relativement à cette question n'est pas nécessaire. Il n'est pas non plus utile d'élaborer, maintenant, des lignes directrices, sauf pour suggérer que tout organisme chargé de faire appliquer la loi devrait consulter les ministères fédéraux du Revenu et de la Justice, pour chaque cas en particulier.

17. L'EMPLOI DES AGENTS SECRETS ET LEURS ACTIVITÉS

Les membres du comité ont convenu, d'un commun accord, qu'il conviendrait d'élaborer des lignes directrices concernant les activités des agents secrets, et que ces lignes directrices devraient s'adresser aux policiers et à l'avocat de la Couronne. On a noté, cependant, que l'application rigide des proscriptions contenues dans la recommandation 17 de la Commission McDonald aurait pour résultat d'empêcher virtuellement l'emploi d'agents secrets pour certaines enquêtes criminelles. On est donc d'avis que des lignes directrices en ce domaine ne seraient vraiment très utiles que dans des circonstances tout à fait inhabituelles, atténuantes ou urgentes, dans des cas très précis.

Le Solliciteur général du Canada, en consultation avec la GRC et le conseiller juridique du ministère de la Justice, élaborera des lignes directrices concernant l'emploi de sources confidentielles et d'agents secrets. L'objectif est d'établir des principes et des normes généraux destinés aux membres de la GRC, à leurs agents et aux sources.

Les membres du comité recommandent que les provinces coopèrent entre elles ainsi qu'avec le Solliciteur général du Canada pour mettre au point des principes directeurs touchant à l'emploi des agents secrets et à leurs activités.

18. ABUS DE CONFIANCE
(INFRACTION PRÉVUE PAR L'ARTICLE III DU CODE CRIMINEL)

La Commission McDonald a suggéré qu'un policier pourrait commettre une fraude en vertu de l'article III du Code criminel, lorsque, dans l'exercice de son pouvoir discrétionnaire, comme informateur éventuel, il décide de ne pas porter plainte. Cette suggestion montre clairement que la Commission McDonald n'est pas très au courant du processus d'accusation et de poursuite en matière de droit pénal. L'adoption d'une loi ou d'une mesure administrative sur cette question n'est pas nécessaire.

19. LES COMMISSIONS SECRÈTES
(INFRACTION PRÉVUE PAR L'ARTICLE 383 DU CODE CRIMINEL)

En suggérant que les agents de la GRC pourraient commettre des infractions, en vertu de l'article 383 du Code criminel, en rétribuant des informateurs, la Commission ne tient aucun compte de l'expression "par corruption" du sous-alinéa 383 (1) (a), pas plus qu'elle ne considère le jugement rendu récemment par la Cour suprême du Canada dans l'affaire Palmer, jugement qui reconnaît que, dans certains cas, il est nécessaire et approprié de payer un informateur. L'adoption d'une loi ou d'une mesure administrative sur cette question n'est pas nécessaire.

20. LES TECHNIQUES D'INTERROGATION

La Commission McDonald a fait les recommandations suivantes, à la page 1181 du Deuxième rapport, volume 2:

280. "NOUS RECOMMANDONS QUE la GRC adopte, au sujet de l'interrogation, les lignes de conduite suivantes:

- a) les membres de la Gendarmerie sont tenus d'informer les détenus, dans un délai raisonnable après leur incarcération, de leur droit de retenir les services d'un avocat; et
- b) les membres de la Gendarmerie devraient offrir aux détenus, lorsqu'ils en font la demande, des moyens raisonnables de communiquer sans délai avec leur avocat.

281. NOUS RECOMMANDONS QUE la GRC révise, en matière d'interrogation, les programmes de formation et la documentation y afférente, de manière à prévoir les instructions qui s'imposent concernant le droit des accusés de retenir les services d'un avocat et de communiquer avec lui.

282. NOUS RECOMMANDONS QUE les membres de la GRC soient tenus de faire part aux détenus, dans un délai raisonnable après leur arrestation, de l'existence de dispositions leur permettant de retenir les services d'un avocat aux frais de l'État, s'ils n'ont pas les moyens de payer ses services."

En attendant le résultat et l'analyse des travaux de la Commission de réforme du droit du Canada, chargée de la révision du Code criminel, sur les interrogations des suspects, nous croyons que la Charte des droits et le droit jurisprudentiel actuel traite correctement de cette question. Aucune modification législative ou mesure administrative n'est nécessaire.

21. LA TROMPERIE

La Commission McDonald a fait la recommandation suivante, à la page 1182 du Deuxième rapport, volume 2:

284. "NOUS RECOMMANDONS QUE le Code criminel soit modifié de façon à prévoir la provocation policière comme moyen de défense englobant le principe suivant:

L'accusé devrait être acquitté s'il est prouvé qu'un membre ou agent d'un corps policier a, en l'incitant à commettre le crime, dépassé largement les limites acceptables compte tenu de toutes les circonstances, y compris la nature du crime, la possibilité que l'accusé avait déjà l'intention de le commettre et la nature et l'étendue de la participation de la police."

D'après le jugement rendu récemment par la Cour suprême du Canada dans l'affaire Amato, nous ne voyons pas la nécessité d'un changement législatif dans ce domaine.

22. PRINCIPE D'EXCLUSION

En raison de l'adoption, à la suite du rapport McDonald, du paragraphe 24(2) de la Charte des droits, et de l'article 22(2) qu'on se propose d'ajouter à la Uniform Evidence Act (lequel est conçu de façon à être conforme au paragraphe 24(2) de la Charte), les conclusions et les recommandations de la Commission McDonald relatives à cette question n'ont plus leur raison d'être.

ANNEXE A

EXPOSÉ DE PRINCIPE
DES PROCUREURS GÉNÉRAUX DES PROVINCES
CONCERNANT LES QUESTIONS SOULEVÉES PAR
LE RAPPORT DE LA COMMISSION McDONALD

DU 23 AU 25 NOVEMBRE 1981

OTTAWA

A. Responsabilité et imputabilité des procureurs généraux des provinces en regard de l'application de la loi et de l'administration de la justice

1. Tous les corps policiers y compris les agences de services de sécurité relèvent du procureur général de la province pour toutes leurs activités reliées à l'administration de la justice.

2. Pour ce qui est des activités policières reliées à l'application du droit pénal, des lois fédérales dont les poursuites judiciaires sont engagées par les autorités provinciales et des lois provinciales, il incombe à la GRC de recevoir et de suivre les directives données par le procureur général de la province et de tenir celui-ci au courant de toutes leurs activités dans ladite province.

3. Pour ce qui est du rôle fédéral de la GRC dans une province ou de celui de n'importe quelle autre agence fédérale s'occupant de la sécurité nationale, le procureur général de la province, bien que n'étant pas engagé directement, a néanmoins la responsabilité de voir à ce que la loi soit respectée et suivie sur le territoire relevant de sa compétence. Afin d'être en mesure de s'acquitter de ses responsabilités, le procureur général de la province doit, par conséquent, avoir une connaissance suffisante des lignes directrices des politiques et des opérations du corps policier remplissant cette fonction fédérale. Le Solliciteur général du Canada a la responsabilité de veiller à ce que des mécanismes adéquats soient mis en place pour garantir que le procureur général de la province soit:

- a) consulté lors de l'élaboration des lignes directrices des politiques; et
- b) tenu au courant des opérations dans sa province et de toute violation de la loi soumise par un membre du corps policier opérant dans sa province.

4. Ni le Rapport de la Commission McDonald ni les déclarations récentes du gouvernement fédéral ne semblent reconnaître ces principes entièrement.

B. Le droit positif en regard des pratiques policières

1. Considérations générales

Selon la justice pénale de notre pays, l'interprétation et l'application de la loi est en définitive la responsabilité des tribunaux. La détermination d'une loi en rapport avec les pratiques policières doit cependant être faite au jour le jour, en dehors des tribunaux, afin d'être en mesure de conseiller adéquatement les policiers dans l'accomplissement de leurs fonctions. La responsabilité de déterminer ces lois relève du procureur général, et fait partie de son rôle en tant que responsable de l'administration de la justice.

Ni le Solliciteur général du Canada, ni la Commission McDonald, ni aucun homme de loi particulier, n'ont le pouvoir de déterminer des lois.

Les séances de la Commission McDonald se sont déroulées sans que les procureurs généraux des provinces ne viennent étayer de façon significative les faits rapportés à la Commission. Par conséquent, la Commission n'a pu profiter de l'aide des fonctionnaires provinciaux de la justice dont l'expérience dans la détermination des lois en rapport avec les pouvoirs policiers aurait pu servir la Commission.

Après avoir révisé le Rapport, les fonctionnaires provinciaux de la justice trouvent que les conclusions de la Commission, relatives au droit positif en regard des pratiques policières, ne sont pas compatibles avec les principes depuis longtemps établis et qui sous-tendent l'administration de la justice. Les procureurs généraux sont d'accord avec la théorie sous-jacente du Rapport McDonald qui dit que les policiers, tout comme les autres citoyens, sont égaux devant la règle de droit, et qu'ils doivent donc la respecter. Dans son interprétation de la loi, cependant, la Commission omet de reconnaître un certain nombre de réalités pratiques de l'administration de la justice et par conséquent, en arrive à tirer des conclusions erronées.

2. Exemples spécifiques

a) Administration des lois relatives aux dispositifs d'écoute téléphonique

- i) La Commission a fait une fausse interprétation des lois provinciales, telles que les lois provinciales sur les communications téléphoniques et les lois relatives aux violations de la propriété privée, en ne faisant apparemment aucun cas des avis ou des exemptions inscrits dans ces lois.
- ii) La Commission s'est également trompée en favorisant le raisonnement de l'affaire Dass plutôt que celui de l'affaire Dalia, à savoir si le pouvoir d'installer et d'utiliser les dispositifs d'interception inclut un pouvoir tacite d'entrée.
- iii) La Commission a également été mal avisée en s'appuyant, par analogie, sur l'affaire Eccles v. Bourque. Il n'est pas judicieux de comparer l'intention du Parlement en votant l'article 450 du Code criminel, avec celle d'un juge lorsqu'il accorde une autorisation en vertu de l'article 178 du Code.
- iv) La Commission a mal interprété l'article 25 du Code criminel en restreignant la portée de l'alinéa 1) de l'article 25 à l'emploi de la force physique dans l'exécution d'un mandat.
- v) La Commission s'est trompée en interprétant l'alinéa 2) de l'article 26 en en restreignant la portée à la capacité du juge d'étendre les termes de son ordonnance, opposée à celle de l'agent de la paix d'agir selon cette ordonnance.

b) Éléments essentiels de certaines infractions criminelles

Le Rapport réduit l'importance du besoin d'établir la preuve d'une action commise dans un but délictueux, et semble confondre:

- i) un manque remarquable de justification ou motif évidents et légaux;
- avec

- ii) la preuve formelle de l'intention requise et même de l'action elle-même.

La Commission en arrive à tirer des conclusions définitives en ce qui a trait à la prétendue incapacité des policiers à faire la différence entre un mobile et une intention, alors qu'elle-même ne peut faire cette distinction en tirant ses conclusions.

c) Infractions prévues par les lois provinciales

Les fonctionnaires provinciaux de la justice mettent en doute la justesse et la praticabilité des conclusions de la Commission en ce qui a trait a) aux éléments essentiels de certaines infractions prévues dans des lois provinciales, b) aux défences et aux exemptions possibles, c) à l'application du pouvoir d'appréciation du policier en tant qu'informateur éventuel, et d) à l'application du pouvoir d'engager des poursuites. Plus important encore, ils se demandent comment il se fait que la Commission n'ait pas jugé bon de souligner la nécessité de s'en tenir, d'une manière raisonnable, au sens commun et au jugement pratique lorsqu'il est question des éléments susmentionnés.

Les procureurs généraux reconnaissent que certaines modifications pourraient être apportées aux mesures législatives provinciales, afin de garantir que les policiers, dans l'accomplissement de leurs fonctions, appliquent la loi d'une manière efficace et qu'ils s'y conforment. Toutefois, les procureurs généraux mettent en doute la conclusion de la Commission sur le nombre de violations aux lois provinciales, et par le fait même, se demandent jusqu'à quel point des modifications aux lois provinciales sont nécessaires.

d) Pratiques d'enquête policière

Dans le domaine des pratiques d'enquête policière, par exemple, la Commission s'appuie fortement sur le jugement de la Cour Suprême du Canada dans l'affaire Horvath, et conclut qu'il est nécessaire

d'établir un système complet de contrôle des pratiques d'enquête y compris des interrogatoires des suspects. Le Rapport de la Commission a été rédigé avant que le jugement dans l'affaire Rothman ne soit rendu, jugement qui clarifie et qui annule, en partie, ce qui a été dit dans l'affaire Horvath. Les fonctionnaires provinciaux de la justice ne voient pas la nécessité de modifier les pratiques en cours en instaurant un système de contrôle, et préfèrent s'en tenir au rôle traditionnel des tribunaux ainsi que des procureurs généraux lesquels déterminent le bien-fondé des pratiques d'enquête.

3. Ligne d'action proposée

Les procureurs généraux recommandent la formation d'un comité fédéral-provincial composé de fonctionnaires de la justice pénale, afin d'étudier pour quels domaines, parmi les suivants, s'il y en a, des mesures législatives ou des lignes de conduite doivent être établies à l'intention des policiers:

- a) Les infractions criminelles qui sont, selon le Rapport McDonald, inhérentes aux enquêtes policières.
- b) La partie IV.I du Code criminel.
- c) Les lois provinciales qui, selon le Rapport McDonald, s'appliquent aux enquêtes policières.
- d) La Loi de l'impôt sur le revenu et autres lois fédérales et provinciales en rapport avec la collecte de renseignements pertinents aux enquêtes policières.
- e) L'article 25 du Code criminel et l'article 26 de la Loi d'interprétation.
- f) Les pratiques d'enquêtes policières.

4. L'imputabilité de l'organisme chargé de la sécurité nationale
vis-à-vis des procureurs généraux provinciaux

1. Les procureurs généraux veulent exprimer leur profond désaccord face à la décision unilatérale prise par le gouvernement fédéral d'accepter la recommandation de la Commission McDonald, voulant que soit créé un organisme indépendant, chargé de la sécurité, et sous contrôle civil, sans avoir, au préalable, consulté les procureurs.

2. Reconnaissant le fait que le gouvernement a décidé de créer un organisme indépendant, chargé de la sécurité et sous contrôle civil, et qu'il procède actuellement à la mise en place de cet organisme et à l'élaboration de politiques et de procédures, les procureurs généraux expriment leur profond désir de participer à la détermination d'un certain nombre de questions liées à ce processus, comprenant:

- i) La définition de la sécurité nationale incluant l'identification des menaces à la sécurité du Canada.
- ii) L'imputabilité de l'organisme chargé de la sécurité nationale vis-à-vis des procureurs généraux, tel qu'énoncé dans le paragraphe A.3 plus haut.
- iii) Les relations de travail entre l'organisme de sécurité et les corps policiers des provinces.

ANNEXE B

DOCUMENT: 840-243/016

CONFIDENTIEL

RENCONTRES FÉDÉRALES-PROVINCIALES
DES SOUS-MINISTRES DE LA JUSTICE

Rapport provisoire du Comité fédéral-provincial
des fonctionnaires de la justice pénale
sur les recommandations de la Commission McDonald,
destiné à tous les sous-procureurs généraux

Ontario

Ottawa (Ontario)

Du 30 novembre au 2 décembre 1982

RAPPORT PROVISOIRE DU COMITÉ FÉDÉRAL-PROVINCIAL
DES FONCTIONNAIRES DE LA JUSTICE PÉNALE
SUR LES RECOMMANDATIONS DE LA COMMISSION McDONALD,
DESTINÉ À TOUS LES SOUS-PROCUREURS GÉNÉRAUX
ET AUX SOLLICITEURS GÉNÉRAUX ADJOINTS
26 NOVEMBRE 1982

Introduction

Notre Comité, formé de représentants de la Colombie-Britannique, de l'Alberta, de la Saskatchewan, de l'Ontario et du Canada, a tenu trois rencontres de deux jours chacune. L'ébauche du rapport final est en préparation, et le Comité doit se réunir à nouveau au cours de la semaine du 7 février 1983 pour l'étudier. Nous espérons que le rapport final sera prêt, peu de temps après cette rencontre.

Au début de nos discussions, nous avons retenu 24 questions abordées dans le Rapport de la Commission McDonald, et par la suite, nous avons tenté de déterminer de quelle façon les gouvernements fédéral et provinciaux devraient réagir aux recommandations de la Commission en rapport avec ces 24 questions. Nous proposons cinq lignes d'action possibles pouvant s'appliquer à l'une ou l'autre de ces questions. Ces cinq lignes d'action sont:

- A) Établir des mesures législatives liant l'action de la police à un mandat judiciaire préalable;
- B) Établir des mesures législatives liant l'action de la police à une approbation ou à une autorisation ministérielles préalables;
- C) Établir des mesures législatives réglementant l'exemption relative aux actions de la police;
- D) Astreindre le corps policier à de nouvelles lignes de conduite fondées sur une interprétation précise (autre que celle de la Commission McDonald) des pouvoirs accordés aux agents de la paix, aux termes des lois ou de la common law;
- E. Ne prendre aucune mesure particulière.

Questions et recommandations possibles

Ligne d'action
possible (voir
lignes d'action A à
E plus haut)

Question	
1. Dispositifs d'écoute téléphonique dans les affaires Dass/Dalia	D
2. Déplacement d'un véhicule à moteur dans le dessein d'installer un dispositif d'interception en vertu d'une autorisation judiciaire	D
3. Entrées subreptices (incluent l'entrée sans mandat dûment prévue par la loi, mais pas l'entrée ou la perquisition sans mandat dans le but de procéder à une arrestation éventuelle)	A
4. Délit mineur d'intrusion et lois provinciales relatives aux violations de la propriété	D
5. Les infractions suivantes: 1) entrée par effraction; 2) vol; 3) méfait; 4) intrusion de nuit; 5) possession d'instruments pouvant servir aux effractions de maison; 6) complot en vue de commettre une intrusion	E
6. Recherche ou saisie ou recherche et saisie à la fois d'articles, alors que la présence de l'agent de police sur les lieux est légitime	D,C
7. Violations présumées d'autres lois (par exemple, vol du courant électrique) et du Code du bâtiment, etc.	E pour la majeure partie mais C dans des situations isolées (par exemple, enregistrement dans un hôtel)
8. Divulgence de communications privées interceptées à des agents de la paix étrangers	D,E
9. Violation présumée, par la GRC, de l'article 178.2 (dissimulation de faits connus) dans ses rapports aux procureurs généraux provinciaux qui doivent soumettre des rapports annuels au corps législatif	E
10. Le Comité de révision indépendant	E
11. Vérification du courrier	A ou B ou C travail supplémentaire nécessaire
12. Accès de la police aux renseignements confidentiels	A et dans certaines circonstances C
13. Surveillance physique	D
14. Fausse identification	B
15. Infractions suivantes: falsification, faux-semblant, usurpation de nom ou de fonction et intimidation	E
16. Revenu des agents de police aux fins de l'impôt	travail supplémentaire nécessaire

ANNEXE CPROCÉDURES ET LIGNES DIRECTRICES RELATIVES AUX PERMIS DE CONDUIRE SPÉCIAUX

Il a été prouvé que les policiers ont un réel besoin d'utiliser des permis de conduire émis sous un autre nom que celui du détenteur. Par conséquent, à la demande du Procureur général de l'Ontario, et avec le concours du Solliciteur général et du Ministre des Transports et Communications, et devenant effective le 27 novembre 1978, la procédure suivante est la seule par laquelle les policiers, ainsi que les agents de la paix, pourront obtenir un permis émis sous un autre nom que celui du détenteur, et que l'on désignera sous le nom de permis de conduire spéciaux. Des permis de conduire spéciaux en blanc seront remis au Solliciteur général, une fois l'an ou selon les besoins du sous-ministre adjoint, Bureau des permis et véhicules, ministère des Transports et Communications.

1) Les demandes de permis spéciaux se feront par écrit au Solliciteur général, au Solliciteur général adjoint ou à leur remplaçant désigné ci-après Solliciteur général:

- a) Le sous-directeur de la Direction de la police criminelle, Division "O" de la GRC, ou le sous-directeur de la sous-direction des drogues, Division "O" de la GRC, ou le Commandant divisionnaire du Service de sécurité de la GRC, selon les besoins pour les opérations de la GRC, en quelque lieu que ce soit;
- b) Le sous-commissaire, Division des Services spéciaux, Sûreté de l'Ontario ou le superintendant en chef;
- c) Le chef de police ou le chef de police adjoint, Sûreté de la région métropolitaine de Toronto;

ci-après désignés fonctionnaires supérieurs, qui devront prouver au Solliciteur général, la nécessité d'obtenir des permis de conduire spéciaux, dans l'intérêt de l'administration de la justice, des forces de l'ordre et de la sécurité nationale.

- REMARQUE: i) Dans le cas d'opérations menées conjointement avec l'un des trois corps policiers susmentionnés ou avec tout autre corps policier, c'est le fonctionnaire supérieur de l'un de ces corps policiers qui devra faire la demande d'un permis de conduire spécial.
- ii) La Sûreté de l'Ontario devra transmettre ce mémoire au Service de renseignements criminels de l'Ontario des autres corps policiers, si l'on juge que cela est approprié, pour que les corps policiers, autres que ceux susmentionnés, se familiarisent avec cette procédure et puissent demander l'assistance de la Sûreté de l'Ontario pour obtenir ces permis spéciaux.
- 2) Le Solliciteur général émettra, si satisfait, un permis spécial en blanc au fonctionnaire supérieur qui enregistre le numéro de permis, la date de demande et d'émission, le nom du fonctionnaire supérieur ainsi que le nom du corps policier dont il fait partie.
- 3) Dans les cas exceptionnels où le fonctionnaire supérieur croit que l'opération menée par son corps policier exige que les informations écrites sur les permis soient inscrites dans les dossiers du ministère des Transports et Communications, il devra faire une demande écrite au Solliciteur général qui demandera lui-même, s'il croit que le besoin est justifié, au sous-ministre adjoint, Bureau des permis et véhicules, un permis spécial comprenant les informations nécessaires sur le détenteur proposé, incluant:
- nom
 - adresse
 - sexe
 - date de naissance
 - taille
 - classe.
- 4) Le ministère des Transports et Communications verra à ce que le permis spécial soit émis et donné au Solliciteur général, lequel enregistrera les particularités du permis spécial avant de le remettre au fonctionnaire supérieur qui en a fait la demande.
- 5) Avant que le détenteur ne reçoive son permis spécial, il devra remettre tout permis de conduire valide en sa possession au fonctionnaire supérieur ou au commandant divisionnaire, lequel permis ne lui sera remis que lorsque le permis spécial aura été rapporté.
- 6) Le fonctionnaire supérieur verra à ce que soit tenu un registre de tous les permis spéciaux obtenus, utilisés ou retournés.

- 7) Les fonctionnaires supérieurs ne devront pas faire de demandes de permis spéciaux pour un détenteur proposé qui ne serait pas résident, d'âge requis, ou qui n'aurait pas obtenu les permis de chauffeur ou de conducteur selon les lois de la province où il demeure. Aucun permis spécial ne devrait être accordé dans une classe pour laquelle le détenteur n'aurait pas obtenu un permis de conduire valide.
- 8) Aucun détenteur d'un permis spécial ne pourra le prêter à une autre personne ni en permettre son utilisation par un tiers.
- 9) Aucun détenteur d'un permis spécial ne devra avoir en sa possession plus d'un permis de conduire, qu'il soit spécial ou non.
- 10) Quiconque ayant en sa possession un permis spécial, devra, à la demande des forces de l'ordre ou pour toutes questions relatives aux véhicules à moteur mettant en cause le public, révéler sa véritable identité aussitôt qu'il est raisonnablement possible de le faire.
- 11) Aucun permis spécial ne pourra être émis autrement que selon la procédure établie dans ce mémoire. L'utilisation de faux permis ne sera pas tolérée.
- 12) Quiconque ayant en sa possession un permis spécial devra le remettre au fonctionnaire supérieur aussitôt qu'il est possible de le faire après la fin de l'opération.
- 13) Le fonctionnaire supérieur devra remettre le permis au Solliciteur général pour son annulation ou pour sa destruction, aussitôt qu'il est possible de le faire après la fin de l'opération.
- 14) Le Solliciteur général, après avoir enregistré le retour du permis spécial, devra aviser le sous-ministre adjoint, Bureau des permis et véhicules, de la destruction de ces permis.
- 15) Tous les permis de conduire obtenus ou en possession des corps de police de l'Ontario avant le 27 novembre 1978, devront être remis au Solliciteur général pour leur annulation ou pour leur destruction, selon le cas, aussitôt qu'il est possible de le faire.
- 16) Tout contact concernant les permis spéciaux avec un employé du ministère des Transports et Communications ne devra être pris que par l'entremise du Solliciteur général.

le 27 novembre 1978

ANNEXE DTABLE DES MATIÈRES

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ALBERTAHighway Traffic Act, S.R.A. 1975, c.56.

- a.50. (1) Any motor vehicle equipped with a siren and being
- (a) used for the transportation of any member of a fire brigade in response to an emergency call, or
 - (b) used for the transportation of a peace officer in response to an emergency call or for the purpose of
 - (i) investigating a reported accident, or
 - (ii) detecting or preventing crime, or
 - (iii) making arrest,
 - ...

may, while being so used and while the siren is being continuously sounded,

- (f) be operated at such speed as is reasonable and proper having regard to
 - (i) the traffic ordinarily upon the highway,
 - (ii) the use of the highway, and
 - (iii) the fact that it is being so used,
 - (g) proceed past a red or stop sign without stopping, and
 - (h) be operated at such speed as is reasonable and safe under the circumstances.
- (2) Where required to do so for the purpose of carrying out his duties as a peace officer, a peace officer may, notwithstanding subsection (1),
- (a) operate a motor vehicle on a highway in excess of the speed limit thereon and at such speed as is necessary and reasonable having regard to the traffic ordinarily upon the highway and the fact that it is being so used,
 - (b) drive past a red or stop signal or stop sign without stopping but only at such speed as is reasonable and prudent under the circumstances, and

- (c) drive and park a motor vehicle contrary to any rule of the road prescribed by this Act or a municipal by-law, if in the interest of law enforcement it is necessary and in the circumstances safe to do so.

a.95 (4) Nothing in this section shall be construed to prohibit police vehicles, ambulances or vehicles engaged in highway repair, maintenance or inspection work or by employees of the Safety Branch from parking upon the roadway when it is advisable to do so

- (a) to prevent accidents,
- (b) to give warning of hazards or of person on the highway, or
- (c) to remove injured persons, or
- (d) to repair roadway, or
- (e) for similar purposes

COLOMBIE-BRITANNIQUEMotor Vehicle Act, S.R.C.B. 1979, c.288

Exemption for emergency vehicles

s.118 (1) Notwithstanding anything in this Part, but subject to subsections (2) and (3), a driver of an emergency vehicle may

- (a) exceed the speed limit;
- (b) proceed past a red traffic control signal or stop sign without stopping;
- (c) disregard rules and traffic control devices governing direction of movement or turning in specified directions; and
- (d) stop of stand.

(2) The driver of an emergency vehicle shall not exercise the privileges granted by subsection (1) unless he is

- (a) sounding an audible signal bell, siren or exhaust whistle and showing a flashing red light;
- (b) a peace officer in the immediate pursuit of an actual or suspected violator of the law; or
- (c) a peace officer engaged in a police duty of a nature that the sounding of a signal bell, siren or exhaust whistle would unduly hamper the performance of that duty, in which case he may exercise the privileges granted by subsection (1) by showing a red flashing light only.

(3) The driver of an emergency vehicle exercising a privilege granted by subsection (1) shall drive with due regard for safety, having regard to all the circumstances of the case, including

- (a) the nature, condition and use of the highway;
- (b) the amount of traffic that is on, or might reasonably be expected to be on the highway; and
- (c) the nature of the use being made of the emergency vehicle at the time.

SR1960-253-123; 1965-27-24; 1976-35-22.

Interpretation

1. In this act

...
"emergency vehicle" means

- ...
(c) a motor vehicle driven by a peace officer, constable or member of the police branch of Her Majesty's Armed Forces in the discharge of his duty;

"peace officer" means a constable or a person having a constable's powers;

MANITOBAHighway Traffic Act, S.R.M. 1970, c.H-60.EMERGENCY VEHICLES

Operation of emergency vehicles.

a.99 (1) Notwithstanding anything in this Part, but subject to subsection (2), (3), (4), and (5), the driver of

- (a) an emergency vehicle; or
- (b) any other vehicle being operated in an urgent emergency and driven by, or escorted or accompanied by, a peace officer;

when responding to, but not when returning from, an emergency call or alarm, or when in pursuit of an actual or suspected violator of the law, may

- (c) exceed the speed limit;
- (d) proceed past a traffic control signal showing a red light or a stop signal without stopping;
- (e) disregard rules and traffic control devices governing direction of movement or turning in specified directions; and
- (f) stop or stand.

REMARQUE: Voir Regina c. Lundt [1964] 3 All E.R. 225.

Requirements respecting emergency vehicles.

a.99 (2) Subject to subsection (3), the driver of a vehicle to which subsection (1) applies shall not exercise the privileges granted under that subsection unless

- (a) he is sounding an audible signal by horn, gong, bell, siren, or exhaust whistle; and
- (b) the vehicle, if equipped therewith, is showing
 - (i) a flashing red light; or
 - (ii) white light emitted by the headlamps which are lighted alternately and in flashes; or
 - (iii) both such flashing red light and alternately flashing headlamps.

Am. S.M. 1970, c.70, a.46.

Application of subsec. (2)

- a.99 (3) Subsection (2) applies only in a case where compliance therewith is necessary in the interests of the public or of safety.

Definitions.

2. In this Act,
...

(14) "emergency vehicle" means, subject to subsection (4) of section 3, a vehicle used

(i) for police duty; or

(36) "peace officer" means

- (i) any member of the Royal Canadian Mounted Police Force and any other police officer, police constable, constable, or other person employed for the preservation and maintenance of the public peace; and
(ii) any person lawfully authorized to direct or regulate traffic, or to enforce this Act or traffic by-laws or regulations, by making arrests for violation thereof or otherwise;

NOUVEAU-BRUNSWICK

Motor Vehicle Act, S.R.N.B. 1973, c.M-17, dans sa forme modifiée

EMERGENCY VEHICLES

- a.110 (1) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.
- (2) The driver of an authorized emergency vehicle may
- (a) park or stand, irrespective of the provisions of this Act,
 - (b) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation,
 - (c) exceed the speed limits so long as he does not endanger life or property, and
 - (d) disregard regulations governing direction of movement or turning in specified directions.
- (3) The exemptions herein granted to an authorized emergency vehicle apply only when the driver of any such vehicle while in motion sounds a bell, siren, or exhaust whistle, and when the vehicle is equipped with at least one lighted lamp displaying a flashing red light visible under normal atmospheric conditions from a distance of one hundred fifty metres to the front of such vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle and the driver thereof, when following a suspected violator of the law, need not sound any audible signal. 1977, c.M-11.1, a.17.

1. In this Act

"authorized emergency vehicle" means

- (a) a motor vehicle operated by peace officer in the course of his duties or employment.

...

...

Police Act, a. du N.-B. 1977, c. P-9.2.

3(4) A member of the Royal Canadian Mounted Police or a member of a police force shall not be convicted of a violation of any Provincial statute if it is made to appear to the judge before whom the complaint is heard that the person charged with the offence committed the offence for the purpose of obtaining evidence or in carrying out his lawful duties.

TERRE-NEUVEHighway Traffic Act, S.R.T.-N. 1970, c.152

- a.196 (1) Notwithstanding any other provision of this Part, the driver of an emergency vehicle when responding to, but not when returning from, an emergency call or alarm, or when in pursuit of an actual or suspected violator of the law may
- (a) subject to subsections (2) and (3), exceed the speed limit; and
 - (b) stop or stand.
- (2) The driver of an emergency vehicle shall not exceed the speed limit unless he is sounding an audible signal by bell, horn, siren or exhaust whistle and is showing a flashing red light if the vehicle is so equipped.
- (3) The driver of an emergency vehicle who is exceeding the speed limit shall drive with due regard for safety having regard to all the circumstances of the case, including
- (a) the nature, condition and use of the highway;
 - (b) the amount of traffic that is on or might reasonably be expected to be on the highway; and
 - (c) the nature of the use being made of the emergency vehicle at the time.
2. In this Act
- ...
- (y) "emergency vehicle" means
- (i) a motor vehicle driven by a constable or by a member of the police branch of any of Her Majesty's Armed Forces where there is an urgent emergency justifying a rate of speed in excess of any maximum rate of speed provided for in this Act,
 - (iv) a motor vehicle where there is an urgent emergency justifying a rate of speed in excess of any maximum rate of speed provided for in this Act;

- (1) "constable" includes all members of the Newfoundland Constabulary, and of the Royal Canadian Mounted Police Force from time to time stationed in Newfoundland;

TERRITOIRES DU NORD OUEST

Vehicle Ordinance, O.R.T.N.O. 1974, c. V-2

EMERGENCY VEHICLES

- a.95 (1) Notwithstanding anything in this Part but subject to subsections (2) and (3), the driver of an ambulance, police vehicle or fire-fighting vehicle, when responding to, but not when returning from, an emergency call or alarm, or when in pursuit of an actual or suspected violator of the law, may
- (a) exceed the speed limit;
 - (b) proceed past a red traffic-control signal or stop sign without stopping;
 - (c) disregard rules and traffic-control devices governing direction of movement or turning in specified directions; and
 - (d) stop or stand.
- (2) The driver of an ambulance, police vehicle or fire-fighting vehicle shall not exercise the privileges granted by paragraphs (1) (a), (b) and (c) unless he is sounding an audible signal by bell, siren or exhaust whistle and is showing a flashing red light.
- (3) The driver of an ambulance, police vehicle or fire-fighting vehicle exercising any of the privileges granted by subsection (1) shall drive with due regard for safety having regard to all the circumstances of the case, including,
- (a) the nature, condition and use of the highway;
 - (b) the amount of traffic that is on or might reasonably be expected to be on the highway; and
 - (c) the nature of the use being made of the ambulance, police vehicle or fire-fighting vehicle at the time.
- (4) The driver of an ambulance is deemed to be responding to an emergency call from the time he receives such call until he arrives at the destination for his passenger.
- 1967 (2d), c.9, a.93.

NOUVELLE-ÉCOSSE

Motor Vehicle Act, S.R.N.É. 1967, c.191

Exemption of Police or Fire Vehicle

- a.83 (4) The Section shall not apply in the case of police and fire department vehicles when the same are operating in emergencies and the drivers sound audible signal by bell, siren, compression or exhaust whistle, but this proviso shall not operate to relieve the driver of a police or fire department vehicle from the duty to drive with due regard for the safety of all persons using the highway. S.R., c.191, a.83; 1968, c.40, a.5; 1970, c.53, a.9; 1970-1971, c.51, a.12.

Exemption of Police or Emergency Vehicle

- a.99 (1) The speed limitations as set forth in this Act shall not apply to vehicles when operated with due regard to safety under the direction of the police in the chase or apprehension of violaters of the law or persons charged with a suspected of any such violation, nor to fire departments or fire patrol vehicles when travelling in response to a fire alarm, nor to public or private ambulances when travelling in emergencies and the drivers thereof sound audible signal by bell, siren or exhaust whistle.

Duty To Drive Safely

- (2) This Section shall not relieve the driver of any such vehicle from duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others. S.R., c.191, a.99.

Exemption for Emergency Vehicle

- a.121 (4) This Section shall not apply in the case of police and fire department vehicles when the same are operating in emergencies and the drivers sound +[an] audible signal by bell, siren, compression or exhaust whistle, but this proviso shall not operate to relieve the driver of a police or fire department vehicle from the duty to drive with due regard for the safety of all persons using the highway. S.R., c.191, a.121; 1978-1979, c.29, a.1.

1. In this Act,

...

(att) "police" or "police officer" means a member of the Royal Canadian Mounted Police, a police officer appointed by a city, town or municipality, a police officer appointed by the Attorney General, or a motor vehicle inspector;

ONTARIO

Highway Traffic Act, S.R.O. 1980, c.198, dans sa forme modifiée

- a.109 (12) The speed limits prescribed under this section or any regulation or by-law passed under this section do not apply to,
- (a) a motor vehicle of a municipal fire department while proceeding to a fire or responding to, but not returning from, a fire alarm or other emergency call; or
 - (b) a motor vehicle while used by a person in the lawful performance of his duties as a police officer.
- a.114 (3) Where signs or traffic control devices have been posted or placed under subsection (2), no person shall drive or operate a vehicle on the closed highway or part thereof in intentional disobedience of the signs or traffic control devices.
- (4) Subsection (3) does not apply to a vehicle or road-building machine while it is being used for maintenance of the highway or an ambulance, a fire department vehicle, a public utility emergency vehicle or a police vehicle.
- (5) Every person using a highway closed to traffic in accordance with this section does so at his own risk and the Crown or road authority having jurisdiction and control of the highway is not liable for any damage sustained by a person using the highway so closed to traffic.
- a.124 (1) In this section,
- (a) "emergency vehicle" means,
 - ...
 - (ii) a vehicle while used by a person in the lawful performance of his duties as a police officer.
 - (6) Notwithstanding subsection (5), where an emergency vehicle, upon which a siren is continuously sounding and upon which a lamp is producing intermittent flashes or red light visible from all directions, is brought to a full stop at a red signal-light, the driver of the emergency vehicle

may, after ascertaining that such movement can be made in safety, proceed through the intersection without waiting for a green signal-light to be shown. 1979, c.57, a.10(2).

Regulation 477 under the Highway Traffic Act S.R.O. 1980.

With application to the regulations regarding the parking of vehicles on the King's Highway:

6. Sections 2, 3, 4, and 5 do not apply to a vehicle parked by a person in the lawful performance of his duty as a police officer or by a person in the lawful performance of his duty on behalf of a road authority.
O. Reg. 518/75, a.4, part.

ÎLE-DU-PRINCE-ÉDOUARD

Highway Traffic Act, S.R.I.P.É. 1974, c.H-6, dans sa forme modifiée

a.222 (1) Notwithstanding any other provision of this Act, the driver of an emergency vehicle when responding to, but not when returning from, an emergency call or alarm, or when in pursuit of an actual or suspected violator of the law, may

(a) subject to subsections (2) and (3), exceed the speed limit;

and

(b) stop or stand.

(2) The driver of an emergency vehicle shall not exceed the speed limit unless he is sounding an audible signal by bell, horn, siren or exhaust whistle and is showing a flashing red light if the vehicle is so equipped.

(3) The driver of an emergency vehicle who is exceeding the speed limit shall drive with due regard for safety having regard to all the circumstances of the case, including

(a) the nature, condition and use of the highway;

(b) the amount of traffic that is on or might reasonably be expected to be on the highway; and

(c) the nature of the use being made of the emergency vehicle at the time.

1. In this Act

...

(e.2) "emergency vehicle" means

...

(iv) a motor vehicle driven by a peace officer or constable or by a member of the police branch of any of Her Majesty's Armed Forces in the discharge of his duty where there is an urgent emergency justifying a rate of speed in excess of any maximum rate of speed provided for in this Act.

...

...

(m.3) "peace officer" includes a member of the Royal Canadian Mounted Police, a police officer or police constable appointed by and for a city, town or village to which the Village Service Act, S.R.I.P.E. 1974, Cap. V-5, applies, and any officer of the division designated as such by the Minister under this Act;

QUÉBECCode de la sécurité routière, c. C24.1

1. Dans le présent code, à moins que le contexte n'indique un sens différent, on entend par les mots:

"véhicule d'urgence": un véhicule routier utilisé comme véhicule de police conformément à la Loi de police (chapitre P-13), un véhicule utilisé comme ambulance conformément à la Loi sur la protection de la santé publique (chapitre P-35), un véhicule de service d'incendie ou tout autre véhicule reconnu comme véhicule d'urgence par la Régie;

- a. 402 Si les circonstances l'exigent, le conducteur d'un véhicule d'urgence qui est dans l'exercice de ses fonctions est exempt des obligations imposées par les articles 325 à 328, 333, 334, 337, 364 à 366, 369 et 373. 1981, c.7, a.402.
- a. 403 Pour l'exemption prévue par l'article 402, le véhicule d'urgence doit être muni des signaux lumineux ou sonores appropriés. Ces signaux doivent être en marche. 1981, c.7, a.403

L'article 402 s'applique aux articles suivants du Code de la sécurité routière:

- 325. Cession de passage
- 326. Signal d'arrêt
- 327. Feu rouge
- 328. Feu rouge clignotant
- 333. Flèche verte
- 334. Feux de voies
- 337. Feu de circulation défectueux ou inopérant
- 364. Stationnement sur un chemin public
- 365. Stationnement en bordure de la chaussée
Stationnement dans une pente
- 366. Stationnement hors de cité, ville ou village
- 369. Stationnement interdit
- 373. Prohibition de vitesse imprudente
Limites de vitesse.

SASKATCHEWANVehicles Act, S.R.S. 1978, c.V-3

- a.139 (12) Nothing in this section applies to a traffic officer, police officer or police constable when engaged in the performance of his duties. S.R.S. 1965, c.377, a.133; 1967, c.82, a.32; 1968, c.83, a.25; 1972, c.144, a.23; 1976-77, c.100, a.13.
- a.144 (18) Notwithstanding anything in this Act or in any municipal bylaw, fire engines, fire department apparatus, ambulances and police cars, when on emergency duty only and when continually sounding the emergency siren, gong or horn and showing to the front a clearly visible flashing red light, shall have the right of way upon all public highways over all other vehicles and shall not be bound to stop at stop streets pursuant to any municipal bylaw or at places or times mentioned in this Act.

TERRITOIRE DU YUKONMotor Vehicle Ordinance, O.R.T.Y. 1975, c.M-11.

a.145 (1) Any motor vehicle equipped with a siren and being

(b) used for the transportation of a peace officer in response to an emergency call or for the purpose of

- (i) investigating a reported accident,
- (ii) detecting or preventing crime,
- (iii) making an arrest,

may while being so used and while the siren is being continuously sounded,

(f) be operated at such speed as is reasonable and proper having regard to

- (i) the traffic ordinarily upon the highway,
- (ii) the use of the highway, and
- (iii) the fact that it is being so used,

(g) proceed past a red or stop signal or stop sign without stopping, and

(h) be operated at such speed as is reasonable and safe under the circumstances.

(2) Where required to do so for the purpose of carrying out his duties as a peace officer, a peace officer may, notwithstanding subsection (1),

(a) operate a motor vehicle on a highway in excess of the speed limit thereon and at such speed as is necessary and reasonable having regard to the traffic ordinarily upon the highway and the fact that it is being so used,

(b) drive past a red or stop signal or stop sign without stopping but only at such speed as is reasonable and prudent under the circumstances, or

(c) drive and park a motor vehicle contrary to any rule of the road prescribed by this Ordinance or a municipal by-law,

if in the interest of law enforcement it is necessary and in the circumstances safe to do so.

2. (1) In this Ordinance

...

"peace officer" means a member of the Royal Canadian Mounted Police;

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FEDERAL-PROVINCIAL CONFERENCES OF
ATTORNEYS GENERAL, MINISTERS RESPONSIBLE FOR CRIMINAL JUSTICE
AND MINISTERS RESPONSIBLE FOR CORRECTIONS

Final Report of the Federal-Provincial Committee
on Enforcement of Maintenance and Custody Orders in Canada

Federal-Provincial Committee



OTTAWA (Ontario)
July 11 - 12, 1983



Ottawa, Canada
K1A 0H8

June 13, 1983

Mr. Roger Tassé
Deputy Minister of Justice
Department of Justice
3rd Floor, Justice Building
Kent and Wellington Streets
Ottawa, Ontario
K1A 0H8

Dear Mr. Tassé:

I have the pleasure of transmitting to you the final Report of the Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada.

The Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders was, as you know, established by Deputy Ministers Responsible for Criminal Justice, at their meeting at Mont Sainte-Anne, Quebec, on June 22, 1981. The objective of the Committee was to identify means of improving the enforcement of orders of financial support, custody of and access to children and to suggest recommendations for action by governments.

The federal government and all provincial governments appointed representatives to the Committee which convened its initial meetings during the summer of 1981. During this time the Committee examined proposals for reform from a wide variety of sources, including the Law Reform Commission of Canada, provincial Law Reform Commissions, the Alberta Institute of Law Research and Reform, the Advisory Council on the Status of Women, the Canadian Bar Association and private individuals and associations. The various enforcement techniques currently in place or under consideration in each of the provinces were assessed to determine the feasibility of introducing the best of each local enforcement system across Canada. The Committee also assessed a number of specific proposals designed to achieve consistency in laws and procedures with respect to the enforcement of orders within and across provincial boundaries.

An interim report, was prepared in October 1981, and presented by the Committee to Federal and Provincial Attorneys General and Ministers of Justice at their Conference in Ottawa on December 7, 8 and 9, 1981. The interim report contained recommendations in three parts addressed to the attention of provincial governments, the federal government, and both levels of government jointly. Ministers and Attorneys General agreed to consider the implementation of those recommendations directed to the attention of their respective jurisdictions. Those recommendations directed to the joint attention of federal and provincial governments were remitted back to the Committee for its detailed study.

To meet this directive the Committee held four additional meetings throughout 1982 to review the implications of implementing those recommendations addressed to the attention of federal and provincial governments jointly. The Committee reported on its progress to Deputy Ministers at their meeting on December 2, 1982, in Ottawa and undertook to submit a final Report with the approval of all Committee members.

The final Report is in two parts and includes recommendations presented in the interim report of October 13, 1981. Under each recommendation, a brief background and explanation is provided. Part I sets out the recommendations addressed to the attention of the provincial governments (section A, recommendations 1 to 15) and the federal government (section B, recommendations 16 to 25) and includes a chart summarizing the status of the proposed legislation or procedure. A review of current provincial law and procedure relating to each recommendation is included in response to a specific directive from Deputy Ministers at their December 2, 1982 meeting in Ottawa. Part II sets out a review of recommendations for joint action by the federal and provincial governments.

The Report includes several appendices:

- A - Enforcement of Maintenance and Custody Orders in Manitoba, which includes documents describing the Manitoba Enforcement system, to which the Committee gave special consideration, since it was thought to be the most complete Canadian enforcement system in place at the time of the Committee's formation;
- B - British Columbia's Divorce Rule excerpt, which provides for the registration of out-of-province orders, which then can be enforced by provincial courts;

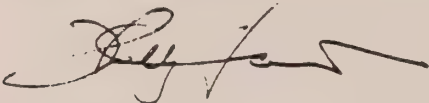
- C - Sub-committee Report on Garnishment, which elaborates on recommendation 2 of Part II of this report;
- D - Statistics on support and custody orders, a report prepared by the Research and Statistics Section of the federal Department of Justice;
- E - Central registry, a preliminary study prepared by Gina Alderson, for the Research and Statistics Section of the federal Department of Justice;
- F - Passport Order in Council, which regulates the issuance of Canadian Passports;
- G - Report on the status of recommendations 1 to 25, stating the situation, in each jurisdiction, in regard to the recommendations addressed to the attention of provincial and federal governments.

A catalogue of Maintenance and Custody Orders Enforcement Personnel and Procedures across Canada has been prepared under separate cover. This document should prove extremely useful to the enforcement officers, especially in dealing with enforcement of extra-provincial orders.

The recommendations of the Federal-Provincial Committee are aimed at bringing major improvements to the existing means of enforcement of those orders. Certain of the solutions proposed are complex and will require close and continuous cooperation between the federal and provincial governments. In some instances improvement will require a change in the popular perception of maintenance and custody orders and the legal obligations which they establish. This change will be promoted by general reforms in family law as, for example, proposed amendments to the Divorce Act and a more realistic perception of the needs and means of the individuals affected by these orders.

In submitting the Report I wish to thank you for your advice, support and encouragement. May I also take this opportunity to compliment all the members of the Federal-Provincial Committee and the jurisdictions they represent for their dedicated participation.

Yours sincerely,



Holly Harris
Chairperson
Federal-Provincial Committee on
Enforcement of Maintenance and Custody
Orders in Canada

THE FINAL REPORT OF THE FEDERAL-PROVINCIAL
COMMITTEE ON ENFORCEMENT OF MAINTENANCE
AND CUSTODY ORDERS IN CANADA

June 7, 1983

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RECOMMENDATIONS TO IMPROVE THE ENFORCEMENT OF MAINTENANCE AND CUSTODY ORDERS IN CANADA

INTRODUCTION

Deputy Ministers Responsible for Criminal Justice, at their Meeting at Mont Sainte-Anne, Quebec, on June 22, 1981, established a Federal-Provincial Committee to identify means of improving the enforcement of orders of financial support, custody of and access to children and to suggest recommendations for action by governments.

This initiative was in response to concerns regarding the increasing rate of default in maintenance payments and violation of custody orders in Canada, as well as to problems encountered in enforcement of extra-provincial orders due to the increasing mobility of separated and divorced persons. Statistics Canada in 1978, in a study entitled "The Frequency of Geographic Mobility in the Population of Canada", reported that the highest rate of mobility occurs among separated and divorced persons. Although no precise statistics are available with respect to the default of maintenance orders and the violation of custody orders, the Law Reform Commission of Canada estimated in 1974 that 75% of maintenance orders are in some form of default in Canada.

BACKGROUND

During the summer of 1981, the Committee, composed of representatives of the federal government and all ten provinces, undertook a survey of the means of enforcement, both within and between provinces, of financial support and custody orders made pursuant to federal and provincial law. Special consideration was given to the Manitoba enforcement system, which was thought to be the most complete Canadian enforcement system in place at the time. A description of the Manitoba Enforcement system is set out in Appendix A.

The Committee examined proposals for reform from a wide variety of sources, including the Law Reform Commission of Canada, provincial Law Reform Commissions, the Alberta Institute of Law Research and Reform, the Advisory Council on the Status of Women, the Canadian Bar Association and private individuals and associations. Some reform proposals were not pursued. For example, a proposal, in a study paper prepared for the Law Reform Commission of Canada, to make use of the

Federal Court of Canada for inter-provincial enforcement of divorce maintenance orders was not extensively considered on the basis that the Court was not readily accessible, and its use would not be consistent with current trends toward unified jurisdiction in the resolution of family disputes. A number of proposals, although perhaps desirable, were considered not readily implementable on a long term basis. A proposal for development of a National Enforcement System at the federal level fell into this category.

The various enforcement techniques currently in place or under consideration in each of the provinces were assessed to determine the feasibility of introducing the best of each local enforcement system. The Committee made recommendations to achieve consistency in laws and procedures with respect to the enforcement of both intra-provincial and extra-provincial orders. The Committee considers that its recommendations represent a moderate and balanced approach to the resolution of enforcement difficulties.

The Committee's interim report, presented to Federal and Provincial Attorneys General and Ministers of Justice at their Conference in Ottawa on December 7, 8 and 9, 1981, was in three parts containing recommendations addressed to the attention of provincial governments, the federal government, and both levels of government. The Ministers and Attorneys General agreed to pursue the implications of implementing those recommendations directed to the attention of their respective jurisdictions. It was further agreed that those recommendations which were directed to the joint attention of federal and provincial governments would be remitted to the Committee for further consideration.

The Committee held four more meetings to review the implications of implementing those recommendations addressed to the joint attention of federal and provincial governments. In accordance with further directions from the Deputy Ministers at their December 2, 1982 meeting, in Ottawa, a review of existing provincial law and procedure related to each recommendation has been included. It should be noted however, that the Committee was not able, considering the lack of time and resources available, to attempt any meaningful assessment of the cost implications of its recommendations.

This report is in two parts and includes recommendations presented in the interim report dated October 13, 1981. Under each recommendation a brief explanation of the recommendation is given. Part I sets out the recommendations addressed to the attention of the provincial governments (1 to 15) and the federal government (16 to 25) and includes a chart or note summarizing the existence of the proposed legislation or procedure. Part II sets out the recommendations for joint action by the federal and provincial governments. For clarity and convenience, the report includes several appendices:

- A - Enforcement of Maintenance and Custody Orders in Manitoba;
- B - British Columbia's Divorce Rule excerpt;
- C - Sub-committee Report on Garnishment;
- D - Statistics on support and custody orders;
- E - Central registry;
- F - Passport Order in Council; and
- G - Report on the status of recommendations 1 to 25.

In addition, a catalogue of Maintenance and Custody Orders Enforcement Personnel and Procedures, under separate cover, is attached hereto.

The recommendations which follow represent the views of the majority of Committee members and are offered for the consideration of Deputy Ministers and, ultimately, Ministers of Justice and Attorneys-General.

PART I

RECOMMENDATIONS ADDRESSED TO THE ATTENTION OF THE
PROVINCIAL GOVERNMENTS AND THE FEDERAL GOVERNMENT.

- a) Recommendations addressed to the attention of the provincial governments.

**1. INTRODUCTION OF A COMPUTERIZED SYSTEM FOR
MONITORING MAINTENANCE PAYMENTS AS OPPOSED TO A
MANUAL SYSTEM.**

After a comparison of manual monitoring systems and computerized monitoring systems, the Committee concluded that a computerized system of monitoring may minimize problems such as inaccuracies, delays in detecting defaults in payment, and delays in instituting enforcement proceedings.

The following chart indicates which provinces have a computerized system for monitoring maintenance payments:

COMPUTERIZED SYSTEM FOR MONITORING MAINTENANCE PAYMENTS			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia		x	Under consideration
Alberta		x	
Saskatchewan		x	Under consideration
Manitoba	x		
Ontario		x	A computerized system exists to record total maintenance payments made to a Family Court; however, payments on individual court files are monitored manually.
Quebec	x		
New Brunswick		x	
Nova Scotia		x	Under consideration
Prince Edward Island		x	
Newfoundland		x	

2. INTRODUCTION OF LEGISLATION REQUIRING ALL PROVINCIAL AGENCIES AND INDIVIDUALS SUBJECT TO PROVINCIAL LEGISLATION TO RELEASE UPON A COURT ORDER, THE ADDRESSES, EMPLOYMENT PARTICULARS OR OTHER INFORMATION IN THEIR POSSESSION, WHICH WOULD SERVE TO LOCATE FAMILY MEMBERS FOR THE PURPOSE OF BRINGING AN APPLICATION FOR CUSTODY OR MAINTENANCE OR FOR THE PURPOSE OF ENFORCEMENT OF MAINTENANCE AND CUSTODY ORDERS.

This legislation would require all provincial government agencies, unions, professional organizations, custodians of provincial information banks, and individuals to release the address or employment particulars or other information in their possession which would assist in the location of the following:

- a) a person in default under an existing maintenance order; or
- b) a person who has abducted a child; or
- c) a child who has been abducted; or
- d) a party to a court application where an address is needed for service of documents.

The Committee was of the opinion that the information should be released only to a court official or a designated government official, and not an applicant. Penalties should be imposed for failure to release the information.

Individual rights of privacy must be secondary to the right of an abducted child to be with his or her custodial parent or the right of a dependent family to receive their maintenance. Similar legislative provisions in Canada and in the United States have not been abused. Resolutions of the Alberta Institute of Law Research and Reform and the National Action Committee on the Status of Women have endorsed this recommendation, whereas the Canadian Bar Association in a Resolution rejected a similar recommendation.

The following chart indicates which provinces have legislation requiring the release of information:

LEGISLATION REQUIRING RELEASE OF INFORMATION			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia		x	
Alberta		x	
Saskatchewan		x	
Manitoba	x		
Ontario	x		
Quebec	x		Maintenance Only
New Brunswick	x		
Nova Scotia		x	
Prince Edward Island		x	
Newfoundland		x	

3. DEVELOPMENT OF A COMPUTERIZED INFORMATION BANK TO BE MAINTAINED IN EACH PROVINCE

It is recommended that provincial governments consider establishing a Computerized Information Bank which would operate in conjunction with Recommendations 1 and 2.

To increase the effectiveness of enforcement throughout Canada, each Provincial Computerized Information Bank should be linked to a Central Computerized Bank.

The following chart indicates which provinces have a computerized information bank on enforcement:

COMPUTERIZED INFORMATION BANK			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia		x	
Alberta		x	
Saskatchewan		x	
Manitoba		x	
Ontario		x	
Quebec		x	
New Brunswick		x	
Nova Scotia		x	
Prince Edward Island		x	
Newfoundland		x	

**4. DEVELOPMENT OF AUTOMATIC STATE INITIATED
ENFORCEMENT OF MAINTENANCE PAYMENTS AS OPPOSED TO
INDIVIDUAL INITIATED ENFORCEMENT.**

Discrepancies exist with respect to the role taken by the various provincial governments in the enforcement of maintenance orders. After comparing the various procedures followed, it is recommended that each province consider implementing an automatic state initiated enforcement program, as opposed to individual initiated enforcement.

The following chart indicates which provinces have a system of state initiated enforcement:

STATE INITIATED ENFORCEMENT OF MAINTENANCE PAYMENTS			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia		x	Under consideration
Alberta		x	With the exception of social assistance cases.
Saskatchewan		x	Under consideration
Manitoba	x		
Ontario	x		Depends on resource allocations
Quebec		x	Only on request
New Brunswick	x		
Nova Scotia	x		
Prince Edward Island	x		
Newfoundland		x	At the discretion of enforcement officers

5. INCREASED EMPHASIS ON ENFORCEMENT PROCEDURES WHICH WOULD NOT INVOLVE COURT HEARINGS: EXPANSION OF THE POWER OF ENFORCEMENT OFFICERS OR THE COURT TO ENFORCE MAINTENANCE ARREARS, WITHOUT A COURT HEARING.

The Committee considered and compared the following approaches to enforcement:

- a) enforcement by means of show cause hearing before a court; and
- b) expansion of the powers of enforcement officers or the court to enforce maintenance arrears without a court hearing.

The requirement for a "show cause" hearing often occasions considerable delay. The Committee was of the opinion that once there was an existing order and default occurred, it should not be necessary for the complainant to relitigate the issue. The default should be treated as any order or judgment. As a result, provinces should consider an expansion of the powers of the enforcement officers or the court to enforce maintenance arrears, without a court hearing. For example, enforcement of a default should be possible by the filing of an affidavit by the complainant and the immediate issuance of appropriate civil remedies, such as a continuing garnishment order. The defaulter would then have an opportunity to dispute the action taken.

The following chart indicates which provinces have enforcement procedures which do not involve a court hearing:

EMPHASIS ON ENFORCEMENT PROCEDURES WHICH WOULD NOT INVOLVE HEARINGS			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia		x	A hearing is necessary for determining ability to pay.
Alberta		x	
Saskatchewan	x		
Manitoba	x		
Ontario	x		Dependent on resource allocations
Quebec	x		
New Brunswick		x	Developing
Nova Scotia		x	being considered very seriously
Prince Edward Island		x	
Newfoundland	x		

6. INTRODUCTION OF LEGISLATION WHICH WOULD ABOLISH THE ONE YEAR RULE OF ENFORCEMENT AND PROVIDE THAT THERE BE NO TIME LIMIT WITH RESPECT TO THE RECOVERY OF ARREARS OF MAINTENANCE, UNLESS FULL RECOVERY WOULD BE UNFAIR AND INEQUITABLE.

In some provinces, the one year rule of enforcement is still being followed. This rule provides that a court will only enforce one year of arrears, notwithstanding that the arrears have accumulated over a much longer period of time and the dependent family, as a result, has either had to incur large debts or go on social assistance. There should be no time limit with respect to the recovery of arrears of maintenance, unless the defaulter can prove that enforcement of the full amount of arrears would be unfair and inequitable.

The following chart indicates which provinces have legislation in place that abolishes the one-year rule of enforcement:

LEGISLATION ABOLISHING THE ONE YEAR RULE OF ENFORCEMENT			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia		x	
Alberta		x	Rule not applicable
Saskatchewan		x	
Manitoba	x		
Ontario		x	Rule not applicable
Quebec		x	Three year rule applies
New Brunswick		x	
Nova Scotia		x	Rule not applicable
Prince Edward Island		x	Rule not applicable
Newfoundland		x	Rule not applicable

7. INTRODUCTION OF LEGISLATION WHICH WOULD PROVIDE FOR THE ENFORCEMENT OF MAINTENANCE PAYMENTS CONTAINED IN SEPARATION AGREEMENTS.

At present, enforcement legislation in four of the provinces applies to maintenance provided by a court order and a separation agreement. The other six provinces should consider expanding enforcement legislation to provide for the enforcement of payments of maintenance required by separation agreements.

The following chart indicates which provinces have legislation providing for the enforcement of maintenance payments contained in separation agreements:

LEGISLATION PROVIDING FOR THE ENFORCEMENT OF MAINTENANCE PAYMENTS CONTAINED IN SEPARATION AGREEMENTS			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia	x		
Alberta		x	
Saskatchewan		x	
Manitoba		x	
Ontario		x	
Quebec		x	
New Brunswick	x		
Nova Scotia	x		
Prince Edward Island	x		
Newfoundland		x	

8. INTRODUCTION OF LEGISLATION PROVIDING FOR SPECIFIC REMEDIES TO ENFORCE MAINTENANCE.

It is recommended that each province consider implementing legislation to provide for the following remedies:

- a) ONE SHOT AND CONTINUING ORDER OF GARNISHMENT OR ATTACHMENT;

- b) WRIT OF EXECUTION, WARRANT OF DISTRESS, SEIZURE OF CHATTELS;
- c) IMPRISONMENT;
- d) FINE;
- e) SECURITY DEPOSIT OR BOND;
- f) REGISTRATION OF ORDER AGAINST REAL PROPERTY;
- g) APPOINTMENT OF A RECEIVER;
- h) WARRANT OF ARREST - WHERE THERE IS FEAR THAT THE DEFAULTER WILL FLEE THE JURISDICTION;
- i) EX PARTE ORDER RESTRAINING DISPOSAL OF ASSETS.

RECOMMENDATION 8(a)

For the purposes of enforcing current payments of maintenance as well as arrears of maintenance, the following should be subject to one-shot or continuing garnishment or attachment of monies owing by one person to another:

salaries; wages; commissions; fees; benefits payable under a pension scheme or plan, superannuation scheme or plan, life or fixed term annuity policy, accident sickness or disability insurance policies; and Workers' Compensation benefits.

The provinces are also requested to consider what priority such orders are to be given. In addition provinces should legislate to protect the defaulter, where such an order has issued, from loss of employment, and provide remedies of reinstatement, damages, or both, in appropriate circumstances.

The following chart indicates which provinces have provisions for continuing garnishment as a means of enforcing maintenance:

CONTINUING GARNISHMENT			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia	x		
Alberta	x		
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Quebec	x		
New Brunswick	x		
Nova Scotia	x		
Prince Edward Island	x		
Newfoundland	x		Only available on consent

RECOMMENDATION 8(b)

The following chart indicates which provinces provide for a writ of execution, warrant of distress or seizure of chattels as a means of enforcing maintenance:

WRIT OF EXECUTION, WARRANT OF DISTRESS, SEIZURE OF CHATTELS			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia	x		
Alberta	x		
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Quebec	x		

New Brunswick	x		
Nova Scotia	x		
Prince Edward Island	x		
Newfoundland	x		

RECOMMENDATION 8(c)

The following chart indicates which provinces provide for imprisonment for failure to pay support:

IMPRISONMENT			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia	x		
Alberta	x		
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Quebec		x	
New Brunswick	x		
Nova Scotia	x		
Prince Edward Island	x		
Newfoundland	x		

RECOMMENDATION 8(d)

The following chart indicates which provinces provide for the imposition of a fine for failure to pay support:

FINE			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia	x		
Alberta		x	
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Quebec		x	
New Brunswick		x	
Nova Scotia		x	
Prince Edward Island		x	
Newfoundland		x	

RECOMMENDATION 8(e)

The following chart indicates which provinces provide for security deposits or bonds to be used in enforcement of support orders:

SECURITY DEPOSIT OR BOND			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia	x		
Alberta	x		
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Quebec	x		

New Brunswick	x		
Nova Scotia		x	
Prince Edward Island		x	
Newfoundland		x	

RECOMMENDATION 8(f)

The following chart indicates which provinces provide for the registration of a support order against real property:

REGISTRATION OF ORDER AGAINST REAL PROPERTY			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia	x		
Alberta	x		
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Quebec	x		
New Brunswick	x		
Nova Scotia		x	
Prince Edward Island	x		
Newfoundland	x		

RECOMMENDATION 8(g)

The following chart indicates which provinces provide for the appointment of a receiver, in relation to the enforcement of a support order:

APPOINTMENT OF A RECEIVER			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia	x		
Alberta		x	
Saskatchewan		x	
Manitoba	x		Difficult to use
Ontario	x		
Quebec		x	
New Brunswick		x	
Nova Scotia		x	
Prince Edward Island		x	
Newfoundland		x	

RECOMMENDATION 8(h)

The following chart indicates which provinces provide for the issuing of an arrest warrant where it is feared that a delinquent support debtor will leave the province:

WARRANT OF ARREST - WHERE THERE IS FEAR THAT THE DEFAULTER WILL FLEE THE JURISDICTION			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia		x	
Alberta	x		
Saskatchewan	x		
Manitoba		x	
Ontario	x		
Quebec		x	
New Brunswick	x		
Nova Scotia		x	
Prince Edward Island		x	
Newfoundland	x		

RECOMMENDATION 8(i)

The following chart indicates which provinces provide for an ex parte order to prevent the disposal of assets:

<u>EX PARTE ORDER RESTRAINING DISPOSAL OF ASSETS</u>			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia		x	Only available in division of family assets, not to enforce support orders
Alberta		x	
Saskatchewan	x		
Manitoba		x	

Ontario	x		
Quebec		x	
New Brunswick	x		Not for divorce orders
Nova Scotia		x	
Prince Edward Island	x		
Newfoundland	x		

9. ENACTMENT OF THE PROPOSED UNIFORM RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT BY THE PROVINCES ON THE UNDERTAKING THAT THE PROPOSED SECTION 7(7) WILL BE DELETED AND SENT BACK TO THE UNIFORM LAW CONFERENCE OF CANADA FOR REWORDING. THE COMMITTEE RECOMMENDS THAT SECTION 7(7) BE WORDED TO PROVIDE THAT WHERE ONE OF THE PARTIES HAS CONTINUED TO RESIDE IN THE ORIGINAL PROVINCE, AND THE OTHER PARTY HAS MOVED TO A RECIPROCATING PROVINCE, THE COURT IN THE ORIGINAL PROVINCE SHOULD RETAIN THE FINAL POWER TO VARY THE ORDER. THE COURT IN THE RECIPROCATING PROVINCE WOULD BE GIVEN A POWER TO ENTERTAIN AN APPLICATION FOR A PROVISIONAL ORDER OF VARIATION WITH THE ORIGINAL COURT BEING GIVEN THE POWER TO CONFIRM OR DENY THE VARIATION OF THE ORDER.

Certain members of the Committee expressed concern with respect to the practical application of section 7(7) of the proposed Uniform Reciprocal Enforcement of Maintenance Orders Act, which was approved by the Uniform Law Conference of Canada in 1979. The proposed section 7(7) would allow a court in a reciprocating province to vary a final order of maintenance made in another province even where one of the parties has continued to reside in the original province. The proposed legislation would result in serious injustices to the dependent family remaining in the province where the order was originally granted. Although section 7(7)(c) provides that the matter shall be remitted to the jurisdiction where the complainant lives, this is not satisfactory as the registering court should not be given the final power to vary a final order of another province.

It is recognized that it may be a hardship to require the respondent to return to the originating jurisdiction for a variation of the original order, especially where the circumstances have changed and his or her financial position is worse. However, the Committee proposes that rather than the proposed section 7(7), a better provision would be one which would give the registering court the power to entertain an application for a "provisional order" of variation.

A transcript of the proceedings could then be forwarded to the original court which granted the order, and the complainant would be required to give evidence with respect to his or her present situation. The original court would then have the power to either confirm or deny the variation of the order. The Committee is of the opinion that this is preferable to the method of variation that is proposed by section 7(7), as the original court retains the final power to deal with the order.

The Committee recommended in October 1981, that the proposed section 7(7) be placed on the agenda of the Uniform Law Conference of Canada in 1982 for consideration and that provinces should enact the proposed Uniform Reciprocal Enforcement of Maintenance Orders Act on the undertaking that section 7(7) is not proclaimed until such time as the Uniform Law Conference had considered it. In 1982, the Uniform Law Conference of Canada adopted the proposed section 7(7).

The following chart indicates which provinces have enacted the Uniform Reciprocal Enforcement of Maintenance Orders Act with the amended section 7(7):

ENACTMENT OF THE PROPOSED UNIFORM RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT WITH THE AMENDED SECTION 7(7)			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia		x	
Alberta		x	Under consideration
Saskatchewan		x	Expected in 1983
Manitoba	x		To be proclaimed in 1983

Ontario	x		
Quebec		x	Under consideration
New Brunswick	x		Bill expected to be passed in 1983
Nova Scotia		x	Expected in 1983
Prince Edward Island		x	Expected in 1983
Newfoundland		x	Expected in 1983

10. INTRODUCTION OF UNIFORM LEGISLATION PROVIDING FOR ORDERS WHICH WOULD PROHIBIT ONE SPOUSE FROM MOLESTING, ANNOYING OR HARASSING THE OTHER SPOUSE OR ANY CHILD IN THE CUSTODY OF THAT SPOUSE.

The following chart indicates which provinces have introduced legislation providing for orders which would prohibit a spouse from molesting, annoying or harrassing the other spouse and the children:

UNIFORM LEGISLATION FOR ORDERS PROHIBITING MOLESTING, ANNOYING OR HARASSING			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia		x	
Alberta		x	
Saskatchewan		x	Will be considered
Manitoba	x		
Ontario	x		
Quebec		x	Under consideration
New Brunswick	x		
Nova Scotia		x	Under consideration
Prince Edward Island	x		On application to Judge
Newfoundland		x	Available by court order

11. INTRODUCTION OF LEGISLATION PERMITTING THE
ASSIGNMENT OF MAINTENANCE PAYMENTS TO THE
PROVINCIAL GOVERNMENT WHERE THE RECIPIENT OF
MAINTENANCE IS RECEIVING SOCIAL ASSISTANCE.

A number of provinces have passed such legislation and it is desirable that all provinces pass similar legislation.

The following chart indicates which provinces have legislation in place, permitting the assignment of maintenance payments to the provincial government where the support creditor is receiving social assistance:

ASSIGNMENT OF MAINTENANCE PAYMENTS TO THE PROVINCIAL GOVERNMENT IN SOCIAL ASSISTANCE CASES			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia	x		
Alberta	x		
Saskatchewan		x	
Manitoba	x		
Ontario	x		
Quebec	x		
New Brunswick	x		
Nova Scotia		x	
Prince Edward Island	x		
Newfoundland		x	

12. EXPANSION OF THE ROLE OF COUNSEL EMPLOYED BY THE PROVINCIAL CROWN IN ENFORCEMENT TO INCLUDE THE ENFORCEMENT OF FOREIGN CUSTODY ORDERS.

Most provinces provide counsel of the Provincial Crown to represent a foreign dependent in the enforcement of a foreign order of maintenance where the defaulter resides within the province. The Committee examined a program wherein the role of counsel employed by the Provincial Crown has been expanded to include the provision of counsel employed by the Provincial Crown to represent an out-of-province custodial parent where a person has abducted a child into that province. The involvement of the counsel employed by the Provincial Crown in such situations has resulted in minimal additional costs to that province, and has allowed a co-operative network between the police, the Crown, child caring agencies and the courts to be established. The result of this program is the earlier taking of proceedings that result in earlier returns of abducted children to their custodial parents.

It is recognized that the best interests of the child require that such matters be dealt with as quickly and expediently as possible. Support for the expansion of the role of counsel employed by the Provincial Crown in the enforcement of foreign orders by the Canadian Bar Association and the National Association of Women and the Law through resolutions passed in 1981 was noted.

Therefore, all provinces should consider expanding the involvement of the counsel employed by the Provincial Crown to include the enforcement of foreign custody orders.

The following chart indicates which provinces provide crown counsel to assist in enforcement of foreign custody orders:

CROWN COUNSEL TO ASSIST IN ENFORCEMENT OF FOREIGN CUSTODY ORDERS			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia		x	Under consideration for Hague Convention
Alberta		x	
Saskatchewan		x	Except under Hague Convention

Manitoba	x		
Ontario		x	
Quebec		x	Under consideration
New Brunswick	x		
Nova Scotia		x	
Prince Edward Island		x	
Newfoundland		x	Under consideration

13. INTRODUCTION OF LEGISLATION PROVIDING FOR SPECIFIC REMEDIES TO ENFORCE CUSTODY ORDERS

It is recommended that each province consider implementing legislation to provide for the following remedies to enforce custody orders, intra-provincially, inter-provincially and internationally:

(A) TO AID IN THE RECOVERING OF THE CHILD

- (i) POSTING OF A SECURITY OR BOND**
- (ii) WARRANT FOR ARREST - WHERE IT IS FEARED THAT THE ABDUCTING PARENT WILL FLEE THE JURISDICTION**
- (iii) COURT ORDER DIRECTING PEACE OFFICERS TO LOCATE AND ASSIST IN THE RETURN OF ABDUCTED CHILDREN**
- (iv) DEPOSIT OF TRAVEL DOCUMENTS, i.e., PASSPORT**

(B) PENAL SANCTIONS

- (i) IMPRISONMENT FOR CONTEMPT**
- (ii) FINE**

The following chart indicates which provinces provide specific legislative remedies to enforce custody orders:

LEGISLATION PROVIDING FOR SPECIFIC REMEDIES TO ENFORCE CUSTODY ORDERS			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia	x		
Alberta		x	
Saskatchewan		x	Will be considered
Manitoba	x		
Ontario	x		
Quebec		x	Under consideration
New Brunswick	x		Except posting of a security or bond and deposit of travel documents
Nova Scotia		x	Under consideration
Prince Edward Island		x	Warrant for arrest used
Newfoundland		x	Under consideration

14. INTRODUCTION OF UNIFORM CUSTODY ENFORCEMENT LEGISLATION WHICH WOULD IMPLEMENT THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION AND WOULD EXTEND THE PRINCIPLES SET OUT IN THIS CONVENTION TO ENFORCEMENT OF CUSTODY ORDERS WITHIN THE PROVINCE AND BETWEEN PROVINCES.

In 1980, the Uniform Law Conference of Canada adopted an Act to implement the Hague Convention on the Civil Aspects of International Child Abduction. In 1981, the Uniform Law Conference of Canada adopted the Uniform Custody, Jurisdiction and Enforcement Act. The proposed Custody, Jurisdiction and Enforcement Act provides for which court will assume jurisdiction in a

province to hear custody cases and for the enforcement in a province of an extra-provincial custody order. With respect to extra-provincial orders the enforcement remedies include police assistance in the return of an abducted child and are intended to be the same as the enforcement remedies for intra-provincial custody orders. It is recommended that the provincial governments consider these two proposed Uniform Acts when implementing the Hague Convention and extending the principles to the enforcement of intra-provincial and inter-provincial custody orders.

The following chart indicates which provinces have introduced the necessary legislation to implement the Hague Convention:

IMPLEMENTATION OF HAGUE CONVENTION			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia	x		In force upon ratification
Alberta		x	Under consideration
Saskatchewan		x	Expected in Spring 1983
Manitoba	x		In force upon ratification
Ontario	x		In force upon ratification
Quebec		x	Under Consideration
New Brunswick	x		In force upon ratification
Nova Scotia	x		Not yet proclaimed
Prince Edward Island		x	Expected in Spring 1983
Newfoundland		x	Expected in Spring 1983

15. APPOINTMENT OF SPECIALISTS IN FAMILY LAW TO THE
PROVINCIALY APPOINTED JUDICIARY.

The following chart indicates which provinces have
appointed specialists in family law to the judiciary:

APPOINTMENT OF SPECIALISTS IN FAMILY LAW TO THE JUDICIARY			
	<u>Yes</u>	<u>No</u>	<u>Comments</u>
British Columbia		x	
Alberta		x	Under consideration
Saskatchewan		x	Under consideration
Manitoba		x	Expected in 1983 in Unified Family Court
Ontario	x		
Quebec		x	Will be considered if Provincial Family Court created
New Brunswick		x	Expected with expansion of Unified Family Courts
Nova Scotia		x	Will be considered
Prince Edward Island		x	Not applicable
Newfoundland		x	Not applicable

- b) Recommendations addressed to the attention of the federal government

16. AMENDMENT OF SECTION 15 OF THE DIVORCE ACT TO ENABLE ANCILLARY MAINTENANCE AND CUSTODY ORDERS TO BE REGISTERED IN ANY COURT DESIGNATED BY PROVINCES IN ADDITION TO OR INSTEAD OF THE SUPERIOR COURT OF EACH PROVINCE.

Implementation of such a recommendation would assist the enforcement process by permitting direct one-step registration of federal orders in family courts across Canada without the need to register the order in a Superior Court initially or to employ reciprocal or other provincial legislation. The order, once registered, would have the same force and effect as if originally issued by that court. The amendment would constitute an effective response to the Gould v. Gould (Saskatchewan Court of Appeal) line of cases which has held that current provincial reciprocal machinery cannot, in fact, be employed for the enforcement of these orders as they are a federal matter. It should be noted that difficulties might be encountered in having a provincial court judge enforce a superior court order.

This recommendation is being considered within the Department of Justice, although in two provinces (British Columbia and Saskatchewan), the problem has been eliminated by amendment to the Divorce Rules.

17. AMENDMENT OF SECTION 11 OF THE DIVORCE ACT TO PERMIT THE MAKING OF ORDERS FOR BOTH PAYMENT AND SECURITY OF PERIODIC AND LUMP SUM MAINTENANCE.

This amendment would constitute an effective response to the Supreme Court of Canada case of Nash v. Nash. This case has created difficulties in enforcing maintenance by interpreting section 11(1) so as to restrict the remedies which courts may award. Under this interpretation, the courts may make orders binding a maintenance debtor in his personal capacity, but they cannot, in addition, bind him to post security in the event of default. The Committee was of the view that amendment of the section to permit the use of these enforcement remedies together or alternatively would resolve the difficulty.

This recommendation is presently under review within the Department of Justice.

18. APPOINTMENT OF SPECIALISTS IN FAMILY LAW TO THE FEDERALLY APPOINTED JUDICIARY.

The federal government, in recognition of the increasing number of family law cases being heard by federally appointed judges, should endeavour to ensure

that its appointees possess an expertise and express sufficient interest in the resolution of family disputes.

As vacancies occur the federal government will continue, where appropriate, to seek to identify the specialists in family law in considering the selection of appointees.

19. PASSAGE OF BILL C-38 (GARNISHMENT, ATTACHMENT AND PENSION DIVERSION ACT).

The Committee unanimously endorsed the policy and practical effect of this Bill which was introduced by the federal government and secured first reading on June 27, 1980. This Bill would permit, under provincial law, the garnishment or attachment of wages of federal employees for the purpose of enforcing all civil orders, including maintenance orders and the diversion of superannuation benefits of former federal employees for the purpose of enforcing family support orders.

Bill C-38 was passed and received Royal Assent on June 22, 1982. Part I of the Act came into force on March 11, 1983, and Part II is expected to come into force later this summer.

20. INTRODUCTION OF LEGISLATION TO PERMIT CREDITORS OF MAINTENANCE ORDERS TO APPLY TO FEDERAL MINISTERS TO ATTACH OR DIVERT FUNDS ACCRUING OR BECOMING DUE TO THE MAINTENANCE DEBTOR.

Funds standing to the credit or accruing to the credit of a maintenance debtor, such as income tax refunds, unemployment insurance or pension benefits could form a useful source out of which to meet maintenance debts. These monies have traditionally been exempt from seizure or otherwise protected by Crown immunity. In view of the policy behind government Bill C-38, to remove the Crown immunity relating to wages and superannuation benefits, the Committee concluded that there could be no justification for continuing to insulate these other monies from dependent family members. The introduction of appropriate exemptions or monetary limitations to protect the financial requirements of the debtor could be considered.

This recommendation is presently under review within the Department of Justice. It should be noted that under Bill C-38 certain pension benefits can be diverted.

21. INTRODUCTION OF LEGISLATION REQUIRING ALL FEDERAL AGENCIES AND INDIVIDUALS SUBJECT TO FEDERAL LEGISLATION TO RELEASE, UPON COURT ORDER, ADDRESS OR EMPLOYMENT PARTICULARS OR OTHER INFORMATION WHICH WOULD SERVE TO LOCATE FAMILY MEMBERS FOR THE PURPOSE OF BRINGING APPLICATIONS FOR, OR ENFORCING, MAINTENANCE AND CUSTODY ORDERS.

The duty of the government to secure respect for court orders directed to it and designed to promote the welfare of family members must be paramount to any duty on the government to protect information submitted to it by individuals. Failure to release the information should be sanctioned by the imposition of a sufficiently severe penalty to discourage violation. The Committee intended to include in the term federal agencies all federal unions and professional organizations as well as custodians of federal information banks. The only limitation which the Committee was prepared to recommend was that the information would not be released directly to the applicant but would be released either to the court or a designated government official. The rationale for this limitation was to ensure that family members would not receive address particulars directly when it was not their bona fide intention to bring an application for support or custody. The Committee noted that the introduction of similar legislative provisions in the Provinces of Manitoba, Ontario, Quebec and New Brunswick and of the Parent Locator services in the United States has not led to abuse. It also took note of the passage of resolutions containing a similar recommendation by the National Action Committee on the Status of Women and the Alberta Institute of Law Research and Reform. The Canadian Bar Association at its Plenary Session in Vancouver in September 1981 defeated a similar resolution on the basis that it constituted an invasion of privacy.

This recommendation is being reviewed by the Department of Justice.

22. INTRODUCTION OF LEGISLATION LIMITING THE USE OR RELEASE OF PASSPORTS OR OTHER INTERNATIONAL TRAVEL DOCUMENTS RELATING TO CHILDREN.

Ensuring continuity in a child's custodial arrangements must be paramount to the right of individuals to travel freely abroad. A requirement for consent of both parents or a court order permitting the parent to travel outside Canada with the child would provide a particularly useful means of preventing or reducing child abduction abroad.

This matter is presently being reviewed within the Department of External Affairs.

The issuing of passports is governed by an Order in Council (see Appendix F). The usefulness of this recommendation is limited as passports are not required for a Canadian citizen to leave Canada, nor for their entrance into several countries (even if they are not a citizen of that country in some cases). Furthermore, children who are the subject of international custody disputes frequently have dual nationality. The Department of External Affairs will be requiring, in cases where one parent applies for a child's passport, acknowledgment from the other parent.

23. AMENDMENT OF THE DIVORCE ACT TO PERMIT ASSIGNMENT OF FINANCIAL SUPPORT BENEFITS TO THE PROVINCIAL CROWN OR TO A FEDERAL MINISTER.

Implementation of such a recommendation would facilitate enforcement of the maintenance order through provincial social services by shifting control of the enforcement and would permit federal Ministers to set off the order against funds being held to the credit of the debtor.

This recommendation is presently under review within the Department of Justice.

24. AMENDMENT OF SECTION 11(1) OF THE DIVORCE ACT TO PROVIDE THAT ANCILLARY MAINTENANCE ORDERS, UNLESS THE COURT OTHERWISE ORDERS, ARE AUTOMATICALLY BINDING ON THE ESTATE OF THE DEBTOR.

The implementation of this recommendation would resolve difficulties in the enforcement of maintenance orders against a deceased debtor.

This recommendation is presently under review within the Department of Justice. As this could have implications for provincial succession laws it will require careful consideration.

25. AMENDMENT OF SECTION 11(2) OF THE DIVORCE ACT TO PERMIT APPLICATIONS FOR VARIATION OF ANCILLARY MAINTENANCE AND CUSTODY ORDERS IN OTHER THAN THE ORIGINAL COURT.

Section 11(2) of the Divorce Act requires any variation in a maintenance or custody order to be made before the court which originally granted the divorce. This works a hardship in terms of travel time and costs when both parties have moved elsewhere in Canada. The Committee was of the opinion the amendment would resolve this

difficulty and also go some way towards preventing the use of variation as a defence to the enforcement of orders. The order could be varied by other than the original court on consent of the parties or upon a "forum conveniens" basis where both parties are out of the original jurisdiction. This would maintain the requirement that the variation be made in the original court when at least one of the parties continues to be a resident in that province.

This recommendation is presently under review within the Department of Justice.

PART II

RECOMMENDATIONS FOR JOINT ACTION BY THE FEDERAL AND
PROVINCIAL GOVERNMENTS

**1. DEVELOPMENT OF UNIFORM DIVORCE RULES UNDER THE
DIVORCE ACT RELATING TO ENFORCEMENT OF ANCILLARY
MAINTENANCE AND CUSTODY ORDERS.**

Section 19(1) of the Divorce Act permits a court to make rules of court providing for the enforcement of maintenance and custody orders made ancillary to the Divorce Act. Section 19(2) of the Divorce Act, however, permits the Governor-in-Council to supercede these rules to assure uniformity throughout Canada. At present, certain provinces maintain a separate method of enforcement for federal maintenance and custody orders as opposed to provincial maintenance and custody orders; others adopt provincial procedures for enforcement of both types of orders. The Committee was of the opinion that representatives of the federal and provincial governments should enter into discussions with the judiciary, rule-making committees and chairpersons of the family law sections of the Canadian Bar Association to review the current rules and to develop new rules for enforcement of divorce orders which would be uniform across the country and yet which would be as consistent as possible with rules for enforcement of orders made pursuant to provincial laws. This uniform approach would assist in promoting inter-provincial enforcement of all maintenance and custody orders.

The Committee recommends that the divorce rules be amended to incorporate by reference the appropriate provincial system of enforcement along the lines of the divorce rules of the Province of British Columbia (see Appendix B) which incorporate the provincial law of enforcement of maintenance orders.

The Committee further recommends that the appropriate rule making authority in each province then be approached to consider adoption of uniform divorce rules for the enforcement of maintenance and custody orders across Canada.

2. INCREASED USE OF CONTINUING GARNISHMENT OR
ATTACHMENT AS A MEANS OF ENFORCEMENT OF MAINTENANCE
ORDERS MADE ANCILLARY TO THE DIVORCE ACT.

Provincial approaches to the use of continuing garnishment as a means of enforcement are based on differing perceptions of the appropriateness of automatic resort to garnishment with or without default, the need for "show cause" hearings in all or any circumstances prior to granting the order of garnishment and the availability of garnishment for inter-provincial or only for intra-provincial enforcement. For example, the desirability of granting a power to a superior court of one province to order garnishment against an employer in another province was questioned, and difficulties which could arise with respect to enforcement or variation of the garnishment order in the receiving province were noted. Implementation of the recommendation by amendment of the Divorce Act might raise a constitutional issue, in that it would tend to invade provincial responsibility over "property and civil rights" within the province. As a result, the Committee concluded the implementation should proceed by development of uniform enforcement rules followed by amendments to the Divorce Act and to provincial legislation.

The Committee is pleased to note the passage through the Parliament of Canada of the Garnishment, Attachment and Pension Diversion Act. Part I of the Act was proclaimed into force on March 11, 1983 and will promote the enforcement of maintenance orders across Canada as against the wages of federal public servants.

A sub-committee on Garnishment was established consisting of representatives from the provinces of Alberta, Manitoba, New Brunswick and from Canada (see Appendix C) which made the following recommendations:

Recommendation No. 1

All the provinces, and the federal Government, should enact a form of continuing attachment to enforce maintenance orders. The attachment should cover the widest definition of debts and financial obligations payable by the garnishee to the debtor.

Recommendation No. 2

Until recommendation no.1 is implemented, it is the subcommittee's view that, in the interim, much can be done with respect to enhancing the use of existing garnishment legislation in reciprocal maintenance enforcement. It would be the Committee's recommendation that the usual documents forwarded should bring to the attention of the reciprocal jurisdiction that a request for garnishment is set out and that use of the existing legislation, insofar as it permits a garnishment, would be desired.

Recommendation No. 3

There should be no prerequisite of arrears for a judicial order for garnishment to issue; however, the Committee recommends that any attachment or garnishment in the situation where arrears exist should be by an administrative process.

Recommendation No. 4

Where there are arrears, there should be no requirement for a show cause judicial hearing before garnishment or attachment should issue. Moreover, the Committee as a whole recommends that the process, where there are arrears, should be instituted automatically by an administrative official subject to the right of the creditor to resort to judicial process for objection or relief.

Recommendation No. 5

There should be no set exemptions from garnishment, subject to the right of the debtor to apply for relief in a judicial process.

Recommendation No. 6

There should be a civil judicial process to compensate and reinstate an employee who has been disciplined or dismissed due to garnishment.

Recommendation No. 7

Garnishment to enforce a maintenance order should enjoy the highest priority. Wage assignments should be prohibited insofar as they would defeat a maintenance order.

Recommendation No. 8

Where the ministers accept our recommended principles on garnishment, same should be referred to the Uniform Law Conference for consideration as a Uniform Act.

3. EXAMINATION OF POSSIBILITY OF SHARING COST OF CIVIL LEGAL AID BETWEEN THE FEDERAL AND PROVINCIAL GOVERNMENTS RESPECTING THE ENFORCEMENT OF MAINTENANCE AND CUSTODY ORDERS MADE ANCILLARY TO THE DIVORCE ACT.

The matter of federal-provincial cost-sharing in the area of civil legal aid is already under discussion in another forum; however, the Committee was of the opinion that increasing the availability of legal aid in the family law area, as it relates to enforcement of maintenance and custody orders made ancillary to the Divorce Act, would assist family members in securing respect for these orders. As a consequence, the matter should be pursued by officials responsible for this item in the other forum.

The provincial members of the Committee recommend that there be further discussions between the federal and provincial governments regarding cost-sharing of legal aid for enforcement of maintenance and custody orders made ancillary to the Divorce Act.

Representatives from Manitoba and New Brunswick noted that, in their provinces, legal aid certificates are not issued for the enforcement of maintenance and foreign custody orders as Crown Counsel are provided for these matters. This has resulted in substantial savings to their governments.

4. CREATION AND MAINTENANCE OF CATALOGUES OF a) CONTACT PERSONS FOR PURPOSES OF ENFORCING EXTRA-PROVINCIAL MAINTENANCE AND CUSTODY ORDERS b) CURRENT MAINTENANCE AND CUSTODY ORDER ENFORCEMENT PROCEDURES AND c) AVAILABLE STATISTICS RELATING TO CUSTODY AND MAINTENANCE ORDER ENFORCEMENT.

A catalogue of persons to contact at the federal-provincial level when questions of enforcement arise would facilitate exchange of opinion and information and a catalogue of current enforcement procedures would encourage adoption of proven effective and innovative enforcement techniques. Where statistical information exists, exchanges could aid in

identifying national and regional trends. The question of selection of statistical information could be remitted to the Canadian Center for Justice Statistics. A catalogue of enforcement personnel and procedure has been compiled (see attached).

Due to the lack of available statistics relating to custody and maintenance order enforcement, statistics were not included in the catalogue. The results of a recent survey conducted by the Sub-Committee on Information, indicate that the only statistics collected on maintenance and custody orders, which include orders made ancillary to the Divorce Act and pursuant to provincial laws, are kept by provincial governments. The information collected varies greatly among provinces, with no uniform category of collection across Canada. In addition, the collection of statistics on maintenance and custody orders is still in the developmental stage causing problems ranging from no statistics, to collection only in a few areas, to province-wide collection, with clearly identified data collection problems. This affects any attempt at interpretation of the data. Finally, those assigned to collect this information, for the most part court clerks, are over-burdened and the collection of statistics is assigned a low priority.

The Committee recommended that consideration be given to establishing a capacity for updating the catalogue on an annual or regular basis.

The Committee further recommended that the matter of collecting and cataloguing statistics on enforcement of maintenance and custody orders be referred to the Canadian Centre for Justice Statistics for discussion.

5. DEVELOPMENT AND LINKAGE OF FEDERAL AND PROVINCIAL INFORMATION DATA BANKS FOR THE PURPOSE OF LOCATING PARTIES TO MAINTENANCE AND CUSTODY ORDERS.

Such a system might take the form of Parent Locator Services and Maintenance Defaulter Locator Services currently in place in the United States and in some of the provinces.

Development of these types of location services would assist in the implementation of the Hague Convention on the Civil Aspects of International Child Abduction.

A sub-committee on Information made the following recommendations, which were approved by the Committee as a whole:

- (1) That the government of Canada and the provinces agree to establish a capacity to locate parties to maintenance and custody orders.
- (2) That control and administration of the information bank remain with the government responsible.
- (3) That a person be designated to receive and process requests from reciprocating jurisdictions to locate parties to maintenance or custody orders.
- (4) That, as a minimum, each province make available driver's licence and vehicle ownership records (several provinces are presently studying the feasibility of this recommendation).
- (5) That, as a minimum, the federal government make available Unemployment Insurance records or the records of the Canada Employment Information Centre (the Department of Justice is presently studying the feasibility of this recommendation).

6. CREATION OF A CENTRAL REGISTRY SYSTEM TO ACT AS A REPOSITORY OF MAINTENANCE AND CUSTODY ORDERS MADE ANCILLARY TO THE DIVORCE ACT AND PURSUANT TO PROVINCIAL LAW.

A central registry could serve as a check on the status of maintenance and custody orders for the court and for enforcement officers. In addition, the information collected could be used for the research of precedents and to promote consistency in maintenance and custody awards by establishing appropriate or common criteria.

The Sub-Committee on Information reviewed this recommendation and concluded that while the first objective could be achieved it was unlikely that the second objective could be suitably met. The validity of the second objective was questioned by various members of the Committee expressing the views that precedents in awards would not be followed and that regional disparities justify the differences in levels of awards. As the first objective was desirable, the Committee agreed that this recommendation be retained for further study, including consideration of the administrative model and cost effectiveness.

7. DEVELOPMENT OF CHANNELS OF COMMUNICATION WITH UNITED STATES AUTHORITIES TO DISCUSS THEIR U.R.E.S.A. (UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT) AND THEIR PARENT LOCATOR SERVICE.

The United States has adopted uniform reciprocal support legislation. As there is increasing interest in establishing reciprocity between Canadian and American jurisdictions with respect to enforcement, the Committee concluded that discussion with the general drafting Committee of the United States legislation could be of benefit by facilitating exchange of information and concerns with respect to enforcement across the international border.

The Committee wishes to report that, at the meetings of the Uniform Law Conference held at Montebello, Quebec in August 1982, a representative from the Province of Ontario, upon the recommendation of the Committee, contacted the American authorities responsible for the Uniform Reciprocal Enforcement of Support Act.

The Americans are now aware of the unsatisfactory state of reciprocity between the U.R.E.S.A. and R.E.M.O.A. (Reciprocal Enforcement of Maintenance Orders Act) jurisdictions.

The chairperson of the Executive Committee of the U.S. National Conference of Commissioners on Uniform State Laws has advised that the Executive Committee members have agreed to pursue this matter with the Uniform Law Conference of Canada.

8. PROMOTION OF SPECIALIZATION OF THE JUDICIARY IN FAMILY LAW WITH SPECIAL REFERENCE TO THE ROLE OF THE UNIFIED FAMILY COURTS.

9. DESIGNATION OF GOVERNMENT REPRESENTATIVES TO MEET ON A REGULAR BASIS TO PURSUE THE IMPLEMENTATION OF THE COMMITTEE RECOMMENDATIONS AND TO DISCUSS EMERGING CONCERNS IN THE AREA OF MAINTENANCE AND CUSTODY ORDER ENFORCEMENT.

The Committee members were of the view that a number of difficulties and issues relating to enforcement had been resolved within the context of its meetings and concluded that government representatives should continue to meet for the purpose of addressing difficulties relating to enforcement as they arise in the future.

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APPENDIX "A"

ENFORCEMENT OF MAINTENANCE
AND CUSTODY ORDERS
IN MANITOBA

FEDERAL/PROVINCIAL COMMITTEE ON ENFORCEMENT OF MAINTENANCE
AND CUSTODY ORDERS: AUGUST 10 & 11, 1981, TORONTO

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FAMILY MAINTENANCE PROGRAM

On January 1st, 1980, the new Maintenance Enforcement Program will be implemented in Manitoba and all amendments to The Family Maintenance Act passed at the 1979 Session of the Legislature will be in force. These amendments will provide that the enforcement provisions in the Family Maintenance Act will automatically apply to all orders made after January 1st, 1980 under The Child Welfare Act and The Family Maintenance Act, and to all Orders registered pursuant to The Reciprocal Enforcement of Maintenance Orders Act after January 1st, 1980. If the recipient of the maintenance does not want an Order to be put into the Enforcement Program, there is an obligation on that person to file a form with the Designated Officer to that effect. A major feature of this Program will be a computerized system for monitoring maintenance payments under all Orders that are put into the Program.

Existing maintenance orders under The Family Maintenance Act, The Child Welfare Act, The Reciprocal Enforcement of Maintenance Orders Act or the Divorce Act which are presently being enforced through the Enforcement Office of the Family Court will be programmed into the computerized monitoring system in January, 1980, and the automatic enforcement procedures will apply to these Orders in the case of default.

With respect to any existing order of maintenance made under The Child Welfare Act, The Family Maintenance Act, registered under The Reciprocal Enforcement of Maintenance Orders Act that is not presently being enforced through The Enforcement Office, the recipient of the Order merely has to file with the Designated Officer a Statement indicating a desire to enter into the Enforcement Program, pursuant to the provisions of Section 31.2(2) of The Family Maintenance Act.

Any existing Order made pursuant to the Divorce Act that is not presently being enforced through the Enforcement Office may be put into the Program by making an application to the Court of Queen's Bench pursuant to Section 31.3 of the Family Maintenance Act for an Order that the automatic enforcement provisions become applicable.

With respect to Orders made after January 1st, 1980 pursuant to the Divorce Act and any Act other than The Family Maintenance Act, The Child Welfare Act, or The Reciprocal Enforcement of Maintenance Orders Act, an application must be made to the Court granting the Order, pursuant to Section 31.3 requesting that the provisions of automatic enforcement become applicable. Upon the Court of Queen's Bench making such a provision, the Order will be filed in the Provincial Judges Court (Family Division) to enable enforcement by that Court.

The new computerized system requires that all payments be made payable to the receiving spouse and mailed to the appropriate Court office. All accounts enrolled in the program will be monitored regularly by the computer, which will be centrally located at the Provincial Judges Court (Family Division) of Winnipeg. While the computer is centrally situated at Family Court in Winnipeg, all maintenance payments will be made to the local Court office, which will record the payment, forward payment immediately to the receiving spouse, and forward the information to the centralized computer in Winnipeg for monitoring purposes.

If insufficient payment is made, automatic enforcement proceedings will be taken immediately. Automatic enforcement means that the recipient of the Order does not have to request the Designated Officer to enforce the Order. When the computer identifies to the Designated Officer that the account is in arrears, enforcement must be undertaken by the Designated officer, whose expanded powers are set out in Section 31.1(10) of the Act, as follows:

...the designated officer may initiate one or more of the following proceedings:

- (a) Proceedings to realize upon any bond or security deposited under section 25
- (b) Proceedings for the imposition of the penalties provided in section 26.
- (c) Registration of the order in a land titles office under section 27 and the taking of proceedings under The Judgements Act in pursuance of the registration.
- (d) The issuance of a garnishing order under The Garnishment Act or a writ of execution under The Executions Act.
- (e) the appointment of a receiver under Section 31."

The recent amendments to The Family Maintenance Act also deal with situations involving social allowance payments made under The Social Allowances Act. Where a person in whose favour a maintenance Order has been made is receiving assistance under The Social Allowances Act, but does not want to have that Order enforced, Section 31.2(4) of The Family Maintenance Act provides that these maintenance Orders are subject to the monitoring and enforcement provisions under The Family Maintenance Act as long as the person continues to receive social allowance.

Where a family is receiving social allowance, and there is no existing maintenance Order, despite the fact that the father is in a financial position to contribute to his family's maintenance, and the mother refuses to apply to Court for an Order of maintenance, the Government of Manitoba will now initiate Court proceedings of behalf of the family for an Order of maintenance pursuant to Section 7(5) of The Social Allowances Act.

If there are any questions concerning the new Maintenance Enforcement Program please direct them to:

Robyn Moglove Diamond
Departmental Solicitor
Civil Litigation Branch
Department of the Attorney-General
6th Floor, Woodsworth Building
405 Broadway Avenue
WINNIPEG, Manitoba
R3C 3L6
Ph. 944-2841

** Headnotes & Footnotes, The
Manitoba Bar Newsletter -
January, 1980.

FAMILY MAINTENANCE ACT OF MANITOBA

PART IV: ENFORCEMENT OF ORDERS

PART IV

ENFORCEMENT OF ORDERS

Security deposit or bond.

25 (1) An order made under this Act may require the person against whom it is made

- (a) to deposit a specified amount in court, or with such person as the court making the order deems fit, to be held as security and for use in the event of default or in the event of any subsequent order increasing the amount of any payment required to be made under the order; or
- (b) to enter into a bond in a specified amount, with or without sureties who shall severally justify and be approved by the court making the order, conditioned for the fulfilment of the order; or
- (c) to provide some other security for the payment of any amount required to be paid under the order.

DECEMBER, 1980

FAMILY MAINTENANCE

S.M. 1978, c. 25 — Cap. F20

Disposition of security.

25 (2) Where a person deposits an amount as security under subsection (1), any balance thereof remaining undisbursed upon the discharge of the order shall be returned to the person together with interest and less such necessary administration costs as the court deems fit.

Imprisonment for default in security.

25 (3) Where a person fails to make a deposit or to enter into a bond pursuant to an order under subsection (1), the court that made the order may order the person to be imprisoned for such period of time not exceeding 30 days as the court may direct, there to remain unless and until the deposit is made or the bond is entered into, as the case may be.

S.M. 1978, c. 25, s. 25.

Penalty for default.

26 (1) A person who fails to comply with a provision of this Part or with a provision of an order or interim order made under this Act is liable to a fine of not more than \$500.00 or to imprisonment for a term of not more than 30 days or to both the fine and the imprisonment, as a court may under subsection (2) or (3) order.

En. S.M. 1979, c. 38, s. 1.

Order to appear and imposition of penalty.

26 (2) Upon an application therefor, a court may order a person alleged to have failed to comply with a provision of this Part or with a provision of an order or interim order made under this Act to appear or to be brought before it for the purpose of answering to the allegation and, when the person is before the court and if the court is satisfied that the person has failed to comply with the provision, may by order impose any of the penalties provided in subsection (1).

En. S.M. 1979, c. 38, s. 1.

Imposition of penalty without order to appear.

26 (3) Where a person is before a court for any purpose under this Act but other than under subsection (2), the court if satisfied that the person has failed to comply with a provision of this Part or with a provision of an order or interim order made under this Act may there and then by order impose any of the penalties provided in subsection (1).

En. S.M. 1979, c. 38, s. 1.

Service of order to appear.

26 (4) An order to appear before a court under subsection (2) shall be served personally or in such other manner as the court may direct.

En. S.M. 1979, c. 38, s. 1.

Filing order in Land Titles Office.

27 An order for support and maintenance or other payments made under this Act may be registered in any Land Titles Office in the province and, if so registered, is an order to which sections 9 and 21 of The Judgments Act apply.

S.M. 1978, c. 25, s. 27; Am. S.M. 1980, c. 54, s. 2.

S.M. 1978, c. 25 — Cap. F20

FAMILY MAINTENANCE

28 Repealed. S.M. 1980, c. 54, s. 3.

Exemptions under Executions Act and Judgments Act.

29 The exemptions provided by The Executions Act and The Judgments Act do not apply with respect to any process issued by a court to enforce an order for payment made under this Act.

S.M. 1978, c. 25, s. 29.

Application of Garnishment Act.

30 The Garnishment Act applies with respect to any garnishment issued to enforce an order for payment made under this Act.

S.M. 1978, c. 25, s. 30.

Appointment of receiver.

31 (1) Where there is default in respect of an order for payment made under this Act, a court upon an application made by or on behalf of the person in whose favour the order was made may appoint a receiver of any moneys due, owing or payable, or to become due, owing or payable to, or earned or to be earned by, the person against whom the order was made to the extent of the default and, in addition, to the extent of any instalments due or to become due under the order.

Appointment of receiver without formal application.

31 (2) Where a person is before a court for any purpose under this Act but other than pursuant to an application under subsection (1), the court, if satisfied that the person is in default in respect of an order or interim order for payment made under this Act, may there and then and notwithstanding the requirement for an application under subsection (1) appoint the receiver for whom provision is made in that subsection.

En. S.M. 1979, c. 38, s. 1.1.

Exemptions under Garnishment Act.

31 (3) Where a receiver is appointed under this section, the wages of the person against whom the order was made are exempt to the extent set out in The Garnishment Act, and that Act applies to the order appointing the receiver as though it were a garnishing order.

Am. S.M. 1979, c. 38, s. 1.1.

S.M. 1978, c. 25, s. 31; Am. S.M. 1979, c. 38, s. 1.1.

Subject to sec. 31.2.

31.1 (1) This section is subject to section 31.2.

En. S.M. 1979, c. 38, s. 2.

Definitions.

31.1 (2) In this section and in section 31.2,

- (a) "designated officer" means a person employed under The Civil Service Act and designated by the Attorney-General for the purposes of this section;

FAMILY MAINTENANCE

S.M. 1978, c. 25 — Cap. F20

(b) "order" means, as the case may require,

- (i) an order or interim order for payment made under this Act or The Child Welfare Act, or
- (ii) a maintenance order made in a jurisdiction outside of Manitoba and registered or confirmed within Manitoba under The Reciprocal Enforcement of Maintenance Orders Act.

En. S.M. 1979, c. 38, s. 2.

Remittance of payments to designated officer.

31.1 (3) The person required to make the payments under an order shall remit each payment to the designated officer and the designated officer, after receiving and recording the payment, shall forward the payment to the person entitled to receive it.

En. S.M. 1979, c. 38, s. 2.

Records.

31.1 (4) The designated officer shall make and maintain such records of orders, and of payments received and forwarded under subsection (3) in respect of those orders, and such other records as will enable him to ascertain with reasonable dispatch the occurrence of any default in payment under the orders.

En. S.M. 1979, c. 38, s. 2.

Action in cases of default.

31.1 (5) Where the designated officer ascertains that default in payment has occurred under an order, he shall take such lawful steps as he deems requisite for the purpose of enforcing payment of the amount in default.

En. S.M. 1979, c. 38, s. 2.

Initial enforcement measures.

31.1 (6) In the course of steps taken under subsection (5) but without restricting the generality of that subsection, the designated officer may

- (a) take investigative measures to ascertain the whereabouts, place of employment, income and assets of the person in default;
- (b) by written notice mailed by ordinary mail to or served personally upon the person in default, notify the person that, unless the amount in default is paid within a time stated in the notice, one or more of the proceedings or remedies set out in subsections (9) and (10) may be taken to enforce payment.

En. S.M. 1979, c. 38, s. 2.

Information from various sources.

31.1 (7) In the course of investigative measures taken under clause (6) (a), the designated officer may require any person, the government or any agency of the government to disclose to the designated officer any particulars of the address of the person in default that it may have in its possession or control, and the person, government or agency of the government shall disclose the particulars to the designated officer upon being required to do so, notwithstanding anything to the contrary in any other Act of the Legislature.

En. S.M. 1979, c. 38, s. 2.

S.M. 1978, c. 25 -- Cap. F20

FAMILY MAINTENANCE

Crown bound.

31.1 (8) Subsection (7) is binding upon the Crown.

En. S.M. 1979, c. 38, s. 2.

Default hearing and financial statement.

31.1 (9) In the course of steps taken under subsection (5) but without restricting the generality of that subsection and whether or not a notice is given under clause (6) (b), the designated officer may, by written notice mailed by ordinary mail to or served personally upon the person in default, require the person

- (a) to appear at a hearing to be held before a court at a time and place stated in the notice, there to be examined under oath in respect of the default and in respect of the employment, income, assets and financial circumstances of the person; and
- (b) at or before the commencement of the hearing, to prepare and file with the court a sworn financial statement in a form satisfactory to the designated officer and containing particulars as to the employment, income, assets and financial circumstances of the person;

and the person shall appear and shall prepare and file the financial statement in accordance with the notice.

En. S.M. 1980, c. 54, s. 4.

Certificate of designated officer.

31.1 (9.1) At any hearing held in a proceeding under subsection (9) or under any other provision of this Act, a computer print-out

- (a) showing, as of the date of the print-out, the state of the account, as between the parties to the proceeding, in respect of the payments required to be made by one party to the other pursuant to an order; and
- (b) certified by the designated officer as being a true copy of the record in respect of the state of that account as of that date;

is admissible in evidence, on behalf of either party, as prima facie proof of the state of the account, without prior notice to the other party of the intention to submit the print-out in evidence at the hearing and without proof of the signature of the designated officer on the certificate.

En. S.M. 1980, c. 54, s. 4.

Enforcement proceedings.

31.1 (10) In the course of steps taken under subsection (5), but without restricting the generality of that subsection and whether or not a notice is given under clause (6) (b) or a notice is given or the person in default appears under subsection (9), the designated officer may initiate one or more of the following proceedings:

- (a) Proceedings to realize upon any bond or security deposited under section 25.
- (b) Proceedings for the imposition of the penalties provided in section 26.
- (c) Registration of the order in a land titles office under section 27 and the taking of proceedings under The Judgments Act in pursuance of the registration.
- (d) The issuance of a garnishing order.
- (e) The issuance of a writ of execution.
- (f) The appointment of a receiver under section 31.

En. S.M. 1979, c. 38, s. 2; Am. S.M. 1980, c. 54, s. 5

S.M. 1979, c. 38, s. 2; Am. S.M. 1980, c. 54, ss. 4 & 5.

FAMILY MAINTENANCE

S.M. 1978, c. 25 — Cap. F20

Automatic application of enforcement provisions.

31.2 (1) The provisions of section 31.1 apply in the case of any order, other than an order for the payment of a lump sum, made after that section comes into force, unless the person entitled to receive the payments thereunder signs and files with the designated officer a statement in a form satisfactory to the designated officer indicating that those provisions shall not apply in the case of that order and in that event the provisions cease to apply upon the filing of the statement.

En. S.M. 1979, c. 38, s. 2.

Non-application to prior orders or lump sum orders.

31.2 (2) The provisions of section 31.1 do not apply in the case of any order made before that section comes into force or in the case of any order for the payment of a lump sum whenever made, unless the person entitled to receive the payments thereunder signs and files with the designated officer a statement in a form satisfactory to the designated officer indicating that those provisions shall apply in the case of that order and in that event the provisions become applicable upon the filing of the statement.

En. S.M. 1979, c. 38, s. 2.

Subsequent opting into or out of enforcement provisions.

31.2 (3) A person who signs and files a statement under subsection (1) or (2) in respect of an order may subsequently, at any time and from time to time, sign and file a further statement in respect of the order indicating that the provisions of section 31.1 shall apply or shall not apply to the order, as the case may be, and upon the filing of each further statement those provisions become applicable or cease to apply to the order, as the statement may indicate.

En. S.M. 1979, c. 38, s. 2.

Statement by Director of Social Services.

31.2 (4) Where a person in whose favour an order was made is receiving social allowances or assistance under The Social Allowances Act, the Executive Director of Social Services appointed under The Social Services Administration Act or a person acting under his authority shall sign and file a statement under this section indicating that the provisions of section 31.1 shall apply in the case of that order, and upon the filing of the statement those provisions if not already applicable to the order under this section become applicable and, notwithstanding anything herein to the contrary, remain applicable so long as the person in whose favour the order was made continues to receive the social allowances or assistance.

En. S.M. 1979, c. 38, s. 2.

Default under Divorce Act orders, etc.

31.3 In the case of an order or interim order for alimony, alimentary pension or maintenance payments made by a court otherwise than under this Act or The Child Welfare Act, the court may make all or any of the provisions of sections 31.1 and 31.2 applicable thereto, mutatis mutandis.

En. S.M. 1979, c. 38, s. 2.

Definitions.

31.4 In this section and in sections 31.5 and 31.6

- (a) "maintenance debtor" means a person who is required under a maintenance order to pay maintenance to or for the benefit of another person;
- (b) "maintenance order" means an order made under this Act, under The Child Welfare Act or under The Wives' and Children's Maintenance Act, now repealed, requiring a person to make periodic payments for maintenance to or for the benefit of another person;
- (c) "recipient" means the person to whom or for whose benefit a maintenance debtor is required to pay maintenance under a maintenance order.

En. S.M. 1980, c. 21, s. 2.

No limitation on arrears.

31.5 (1) Subject to section 31.6, there is no limitation as to time on a recovery of periodic payments of maintenance in default under a maintenance order.

En. S.M. 1980, c. 21, s. 2.

Death of maintenance debtor.

31.5 (2) Where a maintenance debtor under a maintenance order dies and at the time of death any maintenance payments payable under the order are in default, the amount in default is, subject to section 31.6, a debt of the estate of the maintenance debtor and recoverable by the recipient under the maintenance order in the same manner as any other debt recoverable from the estate.

En. S.M. 1980, c. 21, s. 2.

Death of recipient.

31.5 (3) Where the recipient under a maintenance order dies, the personal representative of the deceased recipient may, subject to section 31.6, recover for the estate of the deceased recipient any payments under the maintenance order that are in default at the time of the death of the recipient.

En. S.M. 1980, c. 21, s. 2.

Remission of maintenance payments.

31.6 Where maintenance payments under a maintenance order are in default, a judge of the court that made the maintenance order may, on application, relieve the maintenance debtor or the estate of the maintenance debtor of the obligation to pay the whole or part of the amount in default if the judge is satisfied

- (a) that, having regard to the interests of the maintenance debtor or the estate of the maintenance debtor, as the case may be, it would be grossly unfair and inequitable not to do so; and
- (b) that, having regard to the interests of the recipient or the estate of the recipient, as the case may be, it is justified.

En. S.M. 1980, c. 21, s. 2.

FAMILY MAINTENANCE

S.M. 1978, c. 25 — Cap. F20

Automatic application of enforcement provisions.

31.2 (1) The provisions of section 31.1 apply in the case of any order, other than an order for the payment of a lump sum, made after that section comes into force, unless the person entitled to receive the payments thereunder signs and files with the designated officer a statement in a form satisfactory to the designated officer indicating that those provisions shall not apply in the case of that order and in that event the provisions cease to apply upon the filing of the statement.

En. S.M. 1979, c. 38, s. 2.

Non-application to prior orders or lump sum orders.

31.2 (2) The provisions of section 31.1 do not apply in the case of any order made before that section comes into force or in the case of any order for the payment of a lump sum whenever made, unless the person entitled to receive the payments thereunder signs and files with the designated officer a statement in a form satisfactory to the designated officer indicating that those provisions shall apply in the case of that order and in that event the provisions become applicable upon the filing of the statement.

En. S.M. 1979, c. 38, s. 2.

Subsequent opting into or out of enforcement provisions.

31.2 (3) A person who signs and files a statement under subsection (1) or (2) in respect of an order may subsequently, at any time and from time to time, sign and file a further statement in respect of the order indicating that the provisions of section 31.1 shall apply or shall not apply to the order, as the case may be, and upon the filing of each further statement those provisions become applicable or cease to apply to the order, as the statement may indicate.

En. S.M. 1979, c. 38, s. 2.

Statement by Director of Social Services.

31.2 (4) Where a person in whose favour an order was made is receiving social allowances or assistance under The Social Allowances Act, the Executive Director of Social Services appointed under The Social Services Administration Act or a person acting under his authority shall sign and file a statement under this section indicating that the provisions of section 31.1 shall apply in the case of that order, and upon the filing of the statement those provisions if not already applicable to the order under this section become applicable and, notwithstanding anything herein to the contrary, remain applicable so long as the person in whose favour the order was made continues to receive the social allowances or assistance.

En. S.M. 1979, c. 38, s. 2.

Default under Divorce Act orders, etc.

31.3 In the case of an order or interim order for alimony, alimentary pension or maintenance payments made by a court otherwise than under this Act or The Child Welfare Act, the court may make all or any of the provisions of sections 31.1 and 31.2 applicable thereto, mutatis mutandis.

En. S.M. 1979, c. 38, s. 2.

Definitions.

31.4 In this section and in sections 31.5 and 31.6

- (a) "maintenance debtor" means a person who is required under a maintenance order to pay maintenance to or for the benefit of another person;
- (b) "maintenance order" means an order made under this Act, under The Child Welfare Act or under The Wives' and Children's Maintenance Act, now repealed, requiring a person to make periodic payments for maintenance to or for the benefit of another person;
- (c) "recipient" means the person to whom or for whose benefit a maintenance debtor is required to pay maintenance under a maintenance order.

En. S.M. 1980, c. 21, s. 2.

No limitation on arrears.

31.5 (1) Subject to section 31.6, there is no limitation as to time on a recovery of periodic payments of maintenance in default under a maintenance order.

En. S.M. 1980, c. 21, s. 2.

Death of maintenance debtor.

31.5 (2) Where a maintenance debtor under a maintenance order dies and at the time of death any maintenance payments payable under the order are in default, the amount in default is, subject to section 31.6, a debt of the estate of the maintenance debtor and recoverable by the recipient under the maintenance order in the same manner as any other debt recoverable from the estate.

En. S.M. 1980, c. 21, s. 2.

Death of recipient.

31.5 (3) Where the recipient under a maintenance order dies, the personal representative of the deceased recipient may, subject to section 31.6, recover for the estate of the deceased recipient any payments under the maintenance order that are in default at the time of the death of the recipient.

En. S.M. 1980, c. 21, s. 2.

Remission of maintenance payments.

31.6 Where maintenance payments under a maintenance order are in default, a judge of the court that made the maintenance order may, on application, relieve the maintenance debtor or the estate of the maintenance debtor of the obligation to pay the whole or part of the amount in default if the judge is satisfied

- (a) that, having regard to the interests of the maintenance debtor or the estate of the maintenance debtor, as the case may be, it would be grossly unfair and inequitable not to do so; and
- (b) that, having regard to the interests of the recipient or the estate of the recipient, as the case may be, it is justified.

En. S.M. 1980, c. 21, s. 2.

DATE: June 27, 1980

NEW FAMILY MAINTENANCE
ENFORCEMENT EFFECTIVE

- - -

Mercier Says System
Improves Compliance

Maintenance payments received through the province's family maintenance enforcement program have more than doubled for the month of May, 1980, over May, 1979, as a result of a new computerized monitoring and enforcement procedure, according to statistics released by Attorney General Gerry Mercier.

Mr. Mercier noted that maintenance payments rose to \$541,917 in May, 1980, from \$225,675 in May, 1979. The Attorney General said the new system is considered "the most sophisticated and progressive in the country" and has been studied by other jurisdictions.

The system has proven so effective that last month all of the 3,000 maintenance orders on the system were being enforced under the program, where in May of 1979 only 850 of a total 1,400 maintenance orders monitored by the courts were actually being enforced.

Under this system, implemented last January, all maintenance orders issued by the courts under provincial legislation are automatically placed within the enforcement program. Furthermore, any existing order, including divorce orders, not already in the program can be included by contacting a court officer of the Family Court (in Winnipeg, telephone 895-5010).

The main feature of the program is a computerized system for monitoring maintenance payments and providing automatic enforcement in the event of default, without the dependent spouse being required to take any action. Mr. Mercier said that while this system is the most sophisticated in Canada, the rental cost of equipment amounts only to \$1,100 per month.

As part of the Maintenance Enforcement Program, all orders payable to spouses in receipt of social allowance benefits have been put into the program for enforcement. The amendment to the Family Maintenance Act provides that the monitoring and enforcement proceedings are applicable to these orders as long as the family continues to receive social allowance benefits.

NEW FAMILY MAINTENANCE

Mr. Mercier emphasized that the program recognizes the basic responsibility of parents to provide for their children even where parents are not living together. He also re-iterated his previous position that the tax-payer should not have to pay for the maintenance of a family where parents are financially able to provide for their children.

The statistics for May, 1980, reveal that there had been an increase of \$33,219 (from \$30,326.45 in May, 1979 to \$63,545.65 in May, 1980) paid for individuals through the court who receive social allowance benefits. This amount reflects an actual dollars savings to the government in regard to the program expenditures, he pointed out.

"The computerized system provides early detection of default within two working days after a maintenance payment is due. The advantage of this system is that it provides for enforcement proceedings to begin within a month of the first default. Under the previous system, arrears accumulated over an average of six months before enforcement proceedings were initiated and, even then, orders were not always enforced."

To secure payment in cases of default, court officers now have the legislative authority to garnishee wages. If garnishment is not sufficient to meet the default, the defaulting spouse can be brought into court.

Mr. Mercier pointed out that "my department now provides representation without cost at these hearings in Winnipeg on behalf of the creditor spouse."

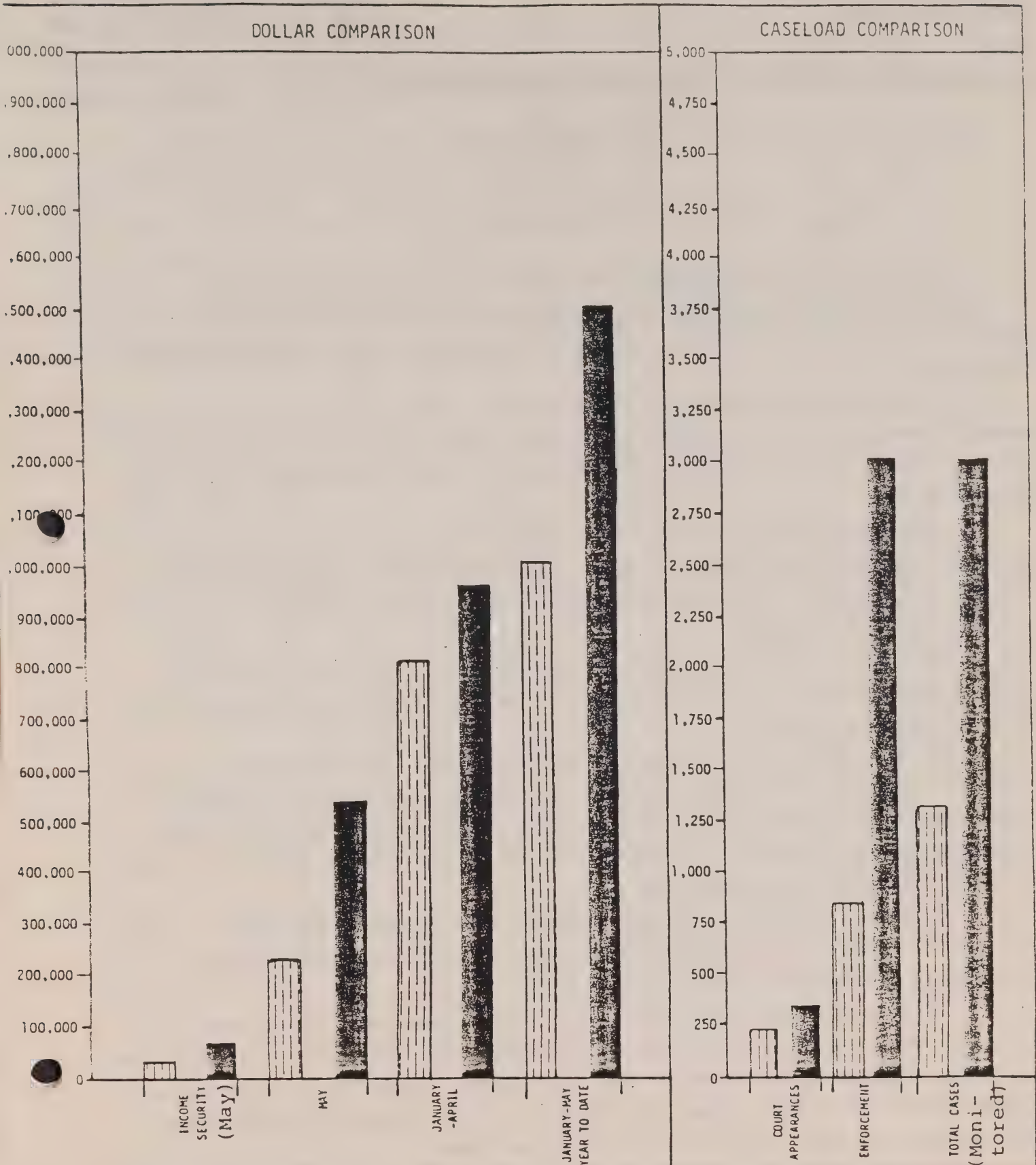
Noting that federal public servants are not currently subject to provincial garnishment laws, Mr. Mercier has requested federal Justice Minister Jean Chretien to introduce legislation to permit the garnishment of their wages. Mr. Chretien has confirmed that he will very shortly introduce such legislation.

Stressing Manitoba's determination to secure enforcement of all maintenance orders wherever the defaulting spouse may reside, Mr. Mercier pointed out that this province has reciprocal enforcement of maintenance orders agreements with more foreign jurisdictions than any other province and is continuing to work towards an increase in such agreements.

"We have also prompted and encouraged other provinces to honor Manitoba maintenance orders to the same extent that Manitoba honors theirs," he said.

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 MAINTENANCE ENFORCEMENT PROGRAM
 STATISTICAL COMPARISON CHART

January to May 31st



DATE: December 12, 1980

MAINTENANCE PAYMENTS
SHOW SUBSTANTIAL RISE

- - -

Computerized System
Boosts Compliance

Maintenance payments received through Manitoba's family maintenance enforcement program rose by 70 per cent during the first 10 months of 1980 over the same period in the previous year, according to statistics released by Attorney General Gerry Mercier.

Attributing the increase to the province's implementation of a new computerized monitoring and enforcement procedure, the attorney general pointed out that payments rose from \$2,228,923 between January 1 to October 31, 1979 to \$3,797,187 in the same period this year.

The new system has proven so effective that last month all of the 3,836 maintenance orders on the system were being enforced under the program whereas in October, 1979 only 850 of the 1,400 maintenance orders being monitored by the courts were actually being enforced.

Mr. Mercier said that as part of the maintenance enforcement program all orders payable to spouses in receipt of social allowance benefits have been put into the program for enforcement.

He said this largely accounts for the 83-per-cent increase in the amount of maintenance payments paid by individuals to dependent spouses, children or parents between the periods January 1 to October 31, 1979 and January 1 to October 31, 1980. Maintenance payments rose from \$199,084 to \$364,856 -- representing, said Mr. Mercier, "an actual dollar saving to taxpayers."

Although the system is the most sophisticated in Canada, the attorney general said, the new computerized monitoring enforcement system is relatively inexpensive, with the equipment costing only about \$1,300 per month.

"The computerized system," he said, "provides early detection of default within four working days after a maintenance payment is due and provides for enforcement proceedings to begin within a month of the first default. Under the previous system, arrears accumulated over an average of six months before enforcement proceedings were initiated and, even then, orders were not always enforced."

To secure payment in cases of default, court officers now have the legislative authority to garnishee wages. If this is not sufficient to meet the default, the defaulting spouse may be brought into court, without any expenses accruing to the dependent spouse.

To maximize coverage, all maintenance orders issued by courts under provincial legislation are automatically placed within the enforcement program. Any existing order, including divorce orders, not already in the program can be included by contacting a court officer of the family court (in Winnipeg the telephone number is 895-5010).

Stressing Manitoba's determination to secure enforcement of all maintenance orders wherever the defaulting spouse may reside, Mr. Mercier pointed out that Manitoba has reciprocal arrangements with 61 jurisdictions and is continuing to work towards an increase in the number of such agreements.

Civil Abduction: The Role of the Manitoba Attorney-General's Department*

Robyn Moglove Diamond
Crown Solicitor

*This article is from a position paper, on a resolution dealing with civil abduction presented by Ms. Diamond, to the 62nd annual meeting of the Canadian Bar Association in Montreal, Quebec on August 28th, 1980.

The Extra Provincial Custody Orders Enforcement Act is a Uniform Act adopted by the Uniform Law Conference of Canada in 1974 and has been enacted by all Provinces with the exception of Quebec and Ontario. The Act provides that a court will, on an application, enforce a custody order made in another state or province unless it is satisfied either,

- (a) that the child did not have a real and substantial connection with the State that made the Order at the time the Order was made or,
- (b) that serious harm to the child would result if the Order were to be varied.

In the latter situation, the Court is empowered to vary the Order of the other Province and make such an Order for Custody as it considers necessary. The Act accords the power to vary the Custody Order of another Province if the Court is satisfied,

- (a) that the child does not have a real and substantial connection with the States in which the original order was made or last enforced, and
- (b) that the child has a real and substantial connection with the Province to which the child has been taken to, and that all parties affected by the custody order are now in the other province.

Section 15 of *The Divorce Act* provides that any Custody Order made pursuant to *The Divorce Act* may be enforced in any other Superior Court in Canada.

The Department of the Attorney-General for the Province of Manitoba provides Crown Counsel in cases of child abduction to represent custodial parents in the civil enforcement of foreign custody orders pursuant to either the *Extra Provincial Custody Orders Enforcement Act* or Section 15 of *The Divorce Act*.

It is the opinion of the Manitoba

Department of the Attorney-General, that for the *Extra Provincial Custody Orders Enforcement Act* and for Section 15 of *The Divorce Act* as it effects foreign Custody Orders to have any real effect, it is necessary for the Attorney-General's Department to provide legal counsel in such situations.

As a result, on March 14th, 1979 the Department wrote to the Deputy Attorneys-General of the other Provinces in Canada setting out our rule and requested that they provide a similar service. Three provinces replied with negative responses and six ignored the requests to date.

Despite the lack of response by the other Provinces, our Department does provide legal counsel to custodial parents where the non-custodial parent abducts the child into Manitoba for purposes of enforcing Foreign Custody Orders. Our Department has taken the position that this is a logical extension of the legal services provided by our Department and other Attorney-General's Departments under *The Reciprocal Enforcement of Maintenance Orders Legislation*.

By the Departments' direct involvement in the Civil Enforcement of Custody Orders a system of co-operation has developed between our Department, the Police Department, the Childrens Aid Societies and the Courts with regard to these type of cases. It has been the experience that providing assistance to foreign custodial parents enables quick enforcement of Orders as well as the foreign custodial parent not having to incur any expenses with regard to engaging the services of a private detective or a lawyer in Manitoba to enforce the legal right of custody. Involving the Crown expedites these matters by the easy assessability to the Courts and Police Departments, and has resulted in quick returns of abducted children.

The Attorney General's Department, rather than Legal Aid should be responsible for enforcement of foreign custody orders. Financial circumstances should not dictate whether the government of each state becomes involved for purposes of enforcing foreign custody orders. The urgency of having the matters dealt with as quickly and expeditiously as possible dictate that the

Crown be involved. Using Legal Aid could involve months of processing the application. Economics should not be a consideration when the interest of an abducted child is at stake.

The lack of response from the other Departments of the Attorneys-General precipitated the Manitoba Bar Association passing a resolution on April 26th, 1980 requesting that the Canadian Bar Association approach the respective Attorneys-General in the other Provinces to adopt the procedure now followed in Manitoba and become similarly involved in cases of civil abduction and that the legislation and procedures relating to civil abduction be consistent and uniform throughout Canada.

Canadian Bar Table Resolution by a vote of 52-33. The Resolution follows:

Resolution

WHEREAS the Department of the Attorney General for the Province of Manitoba provides Crown Counsel in cases of child abduction to represent custodial parents in the civil enforcement of Foreign Custody Orders pursuant to either *The Extra-Provincial Custody Orders Enforcement Act* or Section 15 of *The Divorce Act*;

AND WHEREAS the Departments of the Attorney General for the other Provinces in Canada do not provide a similar service;

AND WHEREAS the Family Law Subsection of the Manitoba Branch of the Canadian Bar Association has endorsed and approved the role taken by the Department of the Attorney General for the Province of Manitoba in cases of child abduction;

IT IS THEREFORE moved that the Canadian Bar Association approach the Provincial Attorney's General to adopt the procedure now followed in Manitoba and become similarly involved in cases of civil abduction, and that the Legislation and procedures relating to civil abduction be consistent and uniform throughout Canada.

* Crown Counsel's Review, October, 1980.

MANITOBA'S PROPOSAL FOR A NATIONAL ENFORCEMENT SYSTEM

MANITOBA RECOMMENDS THAT THE PRESENT FEDERAL JURISDICTION WITH RESPECT TO DIVORCE NOT ONLY BE RETAINED BUT THAT FEDERAL JURISDICTION BE EXPANDED TO INCLUDE CONCURRENT AND PARAMOUNT JURISDICTION TO DEAL WITH THE MONITORING AND ENFORCEMENT OF ALL CUSTODY AND MAINTENANCE ORDERS, WHETHER ISSUED PURSUANT TO FEDERAL OR PROVINCIAL LEGISLATION.

With the high incidence of separation and divorce, and the increased mobility of the population across provincial boundaries, uniform standards concerning the recognition and enforcement of maintenance and custody orders are essential if these orders are to have any practical effect.

Vigorous and consistent enforcement of maintenance and custody orders is a matter to which Manitoba attaches a high priority. Although most of the Provinces have passed uniform reciprocal enforcement legislation dealing with maintenance and custody, there are serious discrepancies in the rules, practices, and procedures that exist throughout Canada which result in inefficient, and in some cases a total lack of, enforcement. For example, under the recent computerized Maintenance Enforcement Program implemented in Manitoba, all orders of maintenance, whether issued pursuant to provincial legislation or divorce legislation, and whether issued within Manitoba or outside Manitoba, are automatically enforced by the Attorney-General's Department on behalf of the recipient of maintenance and legal counsel is provided by the Department to represent the recipient at no cost to the recipient. It is our understanding that we are the only Province which provides so complete a service.

Lack of enforcement is a problem recognized by the Law Reform Commission of Canada in its Study Paper entitled "Family Law: Enforcement of Maintenance Orders" published in 1976:

By far the most pressing problem respecting maintenance orders is the very substantial percentage that are allowed to fall into arrears. As was said in The Family Court:

"It is well known that many court orders regulating family matters, and particularly orders for maintenance, go unheeded. It is estimated that some

*** Please note that this formed part of Manitoba Government's Position Paper on Family Law and the Constitution presented at the First Minister's Meeting on the Constitution in September, 1980.

degree of default with respect to obligations arising under maintenance orders occurs in as many as 75 per cent of all orders".

Enforcement is further complicated by the delay and expense involved in registering and enforcing orders through a different court system each time either party affected by the order moves across provincial boundaries.

The various provinces also attach differing priorities to the reciprocal enforcement of maintenance procedures, resulting in still further inconsistencies and problems. Therefore, it is Manitoba's position that there should be a federal enforcement system to overcome these discrepancies and difficulties.

The history behind reciprocal enforcement of custody orders has been even more problem-ridden. Despite the fact that, with the exception of Quebec and Ontario, all the provinces have adopted uniform legislation for enforcing extra-provincial custody orders, this legislation is rarely utilized. Only in Manitoba will the Department of the Attorney-General provide legal counsel for the purpose of administering and enforcing this legislation, and despite requests made by the Attorney-General for Manitoba, the other jurisdictions have refused to take an active role with respect to the problem of civil abduction of children. This reluctance and lack of co-operation on the part of the other jurisdictions in an area as serious as child abduction has rendered the uniform legislation ineffective in practice.

As shown above, the concept of "uniform" legislation in the area of enforcement, to be adopted by each individual province, has several inherent limitations; not all provinces have adopted this legislation and, even where it has been adopted, serious discrepancies have arisen in its application. For this very reason Manitoba maintains that not only should divorce remain within federal jurisdiction, but federal jurisdiction should be expanded to provide uniform and consistent enforcement of maintenance and custody orders within the country.

An additional and obvious problem related to enforcement is the lack of information and resources available to the provinces to assist in locating defaulting spouses and abducted children. At present, most efforts to locate such persons are fragmented and uncoordinated throughout Canada, and as a result are largely unsuccessful.

Manitoba proposes, as a solution to these problems, federal legislation which would empower the Federal Government to

establish a centralized system of registration and enforcement for all orders issued pursuant to either federal or provincial legislation. The power to administer the legislation would be delegated to the provinces.

To illustrate, under such a system a Central Registry would be established by the Federal Government, with a network of subsidiary registries in each province. Once an order is obtained and registered in a subsidiary registry, it would automatically be registered in the Central Registry, and would have immediate legal effect throughout Canada without the necessity of further registration. Presently, there exists a Central Registry for Divorce Orders. Manitoba's proposal would extend this concept to include the registration of all orders of custody and maintenance and, more importantly, would provide a centralized system for monitoring and enforcing such orders. The proposed federal system of enforcement would establish uniform standards, procedures and remedies applicable throughout the country.

An integral part of the centralized registry would be the establishment of a federal-provincial information bank to facilitate the prompt and efficient tracing of defaulting spouses and abducted children.

The Coalition on Family Law in Manitoba, in a brief presented to the Committee on Constitutional Review in Ottawa on February 1st, 1980, stated:

"In the opinion of the Coalition, it is even more important to consider the effect of the proposed transfer (of divorce jurisdiction) on the enforcement of custody and maintenance orders. In this area, we believe that even more federal jurisdiction should be provided. Moving out of the jurisdiction in which an order is made to prevent its enforcement is all too common and too easy to do. Remedy is supposedly available through reciprocal agreements between the provinces, but, at best, this method is unwieldy, cumbersome and expensive. In many provinces, the out-of-province spouse must locate the defaulting or kidnapping spouse, at her/his own expense, serve the papers and hire a lawyer in the second Province. Clearly, this is beyond the means of the average citizen....We need laws with teeth in them to remedy this situation and they must be applicable across Canada...What is needed is federal involvement".

The Law Reform Commission of Canada called a meeting in Ottawa to discuss Interprovincial Enforcement of Maintenance

Orders on May 30th, 1980. This meeting was attended by provincial representatives of the Family Law Sections of the Canadian Bar Association. This group recommended as follows:

"whatever disposition is made of legislative jurisdiction over marriage and divorce, there ought to remain some federal umbrella enforcement provisions in Canada's Constitution so that Parliament could make laws for enforcement throughout Canada".

It is interesting to note that every provincial Family Law Subsection was represented at this meeting and that the recommendation was unanimous.

APPENDIX "B"

BRITISH COLUMBIA DIVORCE RULE

APPENDIX "B"

BRITISH COLUMBIA DIVORCE RULE

The divorce rule of the Province of British Columbia provides for the registration of out-of-province orders. Rule 36(4) incorporates the provincial law of enforcement of maintenance orders so that ancillary maintenance orders made outside the province can be enforced by provincial courts. Rule 36 states as follows:

- "(1) Where an order has been made by any other court in Canada under section 10 or 11 of the Act the order may be registered pursuant to section 15 of the Act by filing an exemplification or certified copy of the order in the office of the Registrar of the Supreme Court of Victoria, whereupon it shall be entered as an order of the Court.
- (2) The exemplification or certified copy of the order shall be filed with the Registrar by delivering the same by hand or by forwarding the same by ordinary mail, accompanied by a written request that it be registered pursuant to the Act.
- (3) No fee is payable for registration of the order.
- (4) An order registered under this rule may be enforced by the Provincial Court (Family Division) of British Columbia as if it were a maintenance order within the meaning of Part IV of the Family Relations Act of the Province of British Columbia. (R.33(4)am.).
- (5) The Registrar, upon request in person or by letter, may send, without fee, a certified copy of an order made under section 10 or 11 of the Act, to the Registrar of a superior court in another province, to a public welfare organization in that province or to some other person in that province designated by the Attorney-General of that province."

APPENDIX "C"

Sub-Committee Report on Garnishment

REPORT OF THE FEDERAL/PROVINCIAL SUB-COMMITTEE ON
CONTINUING GARNISHMENT, REVISED TO FEBRUARY 17, 1983

INTRODUCTION:

In February of 1982, a sub-committee was formed and instructed to examine and report to the Committee as a whole, the issues surrounding the recommendations dealing with the use of continuing garnishment in maintenance enforcement. The sub-committee was composed, originally, of the representatives of the Provinces of Manitoba, Alberta and New Brunswick. Subsequently, in the Fall of 1982, the federal government requested, and was granted, membership on this sub-committee. The sub-committee was chaired by the representative from the Province of Alberta. Throughout the Spring of 1982 and the Summer of 1982, the sub-committee commenced work in collating, in summarized format, the diverse garnishment legislation applicable to maintenance orders in each of the ten provinces of Canada. The results of the sub-committee's endeavours are outlined in summaries attached to this report. The sub-committee exchanged this preliminary information and met during the meeting of the Committee in Quebec City in September, 1982. An oral report was delivered to the Committee as a whole, and the decision was then taken to prepare a written report for the Deputy Ministers Responsible for Justice to augment Part III of the Committee's interim report previously submitted to the Deputies.

CONTINUING GARNISHMENT:

The sub-committee has ascertained that in each province of Canada there is at least some form of garnishment legislation which permits recipients of maintenance to seek this remedy in attaching salaries of those obligated to pay maintenance. There are essentially two major forms of garnishment:

- (i) One-shot garnishment - requires a fresh order each time a debt arises; and
- (ii) Continuing - covers present debts as well as those due and payable at some future time.

The consequences of the lack of any continuing garnishment in the maintenance order enforcement area is apparent. The need to co-ordinate timing, and the need for a series of successive applications in the cases of wages payable, is time-consuming, frustrating and expensive. The sub-committee is unanimously of the opinion that continuing

attachment should be universally available to meet the needs of the maintenance recipient.

ATTACHMENT OF DEBTS:

The Committee has ascertained that a majority of the provinces do, in fact, have some sort of continuing garnishment order against wages, where maintenance orders are involved. Only a minority of the provinces have, however, a similar continuing garnishment where pension benefits are payable, and furthermore, only a minority of the provinces have continuing garnishment with respect to all types of debts and obligations. The substantive law of garnishment is replete with distinctions drawn between present debts, future debts and additional debts.

The members of the sub-committee are of the view that in the maintenance enforcement area, such distinctions should be legislatively overcome for the benefit of the dependent family. Moreover, the scope of the type of debt that forms the subject matter of the attachment or garnishment order has often been unduly restricted. The members of the sub-committee are of the view that debts should not be given a narrow definition or interpretation. Any amount which obliges a garnishee to pay the debtor should be subject to attachment. Such debts as wages, contractual obligations, pension benefits, and Crown debts and obligations should be subject to attachment.

RECOMMENDATION NO. 1:

All the provinces, and the federal government, should enact a form of continuing attachment to enforce maintenance orders. The attachment should cover the widest definition of debts and financial obligations payable by the garnishee to the debtor.

RECOMMENDATION NO. 2:

Until Recommendation No. 1 is implemented, it is the sub-committee's view that, in the interim, much can be done with respect to enhancing the use of existing garnishment legislation in reciprocal maintenance enforcement. It would be the Committee's recommendation that the usual documents forwarded should bring to the attention of the reciprocal jurisdiction that a request for garnishment is set out, and that use of the existing legislation, insofar as it permits a garnishment, would be desired.

After discussion by the Committee, it was agreed that recommendations 1 and 2 shall be adopted by the Committee.

ATTACHMENT APPLICATION PROCEDURE:

The sub-committee members were unable to agree as to the appropriate initiation procedure for the attachment process. We have all agreed that once garnishment is authorized that the form of attachment available should cover the widest definition of obligations in order to secure payment of the maintenance right. The sub-committee, however, was unable to reach unanimous agreement as to the method of initiating the process of attachment. The sub-committee members were able to isolate four possible alternatives and they lie within the overall headings as to whether garnishment should be viewed as a judicial act or an administrative act.

PROCESS OPTIONS:

(1) No prerequisite of Arrears - Judicial Order:

At least one jurisdiction has garnishment by a judge at the time a support order is made, even where there are no existing arrears of maintenance. Some members of the sub-committee thought this was a very harsh remedy, it smacks of coercion before there has been an indication of bad faith. Nevertheless, it could be useful in those rare cases where clear contempt is shown in the court. The sub-committee left this form of order for the recommendation of the Committee as a whole.

After thorough discussion and by majority vote of the members attending the Committee meeting in Toronto on the 13 and 14 of January 1983, the Committee adopted a recommendation as follows:

RECOMMENDATION NO. 3:

There should be no prerequisite of arrears for a judicial order for garnishment to issue; however, the Committee recommends that any attachment or garnishment in the situation where no arrears exist should be by an administrative process.

(2) Prerequisite of Arrears:

Generally, in a maintenance enforcement application where attachment is being considered, a majority of jurisdictions surveyed require that there be arrears before the

garnishment process can be initiated by either the judiciary or by means of an administrative act such as through the clerk's office.

Dealing with those jurisdictions that use a judicial process to initiate garnishment, there seem to be two (2) main models:

(1) JUDICIAL:

Firstly, by a judge sitting at a show cause hearing without prior notice of intention to the debtor that garnishment or attachment will be used. Secondly, by a judge on an ex parte application basis where there are arrears. Generally, ex parte matters require some sort of qualifying grounds such as urgency or dissipation of property and the court, generally, must be satisfied that the debtor can comply with the order right away.

(2) ADMINISTRATIVE:

There are jurisdictions that permit garnishment of debts in a maintenance enforcement proceeding by a non-judicial (administrative) act. There are two main models of administrative procedures utilized in certain jurisdictions in Canada at the present time. Firstly, upon default in payment of a support order, a creditor can institute garnishment by filing a request with the clerk. Secondly, there can be automatic enforcement by the clerk's office by means of the garnishment remedy, once the creditor has registered his order into an automatic enforcement system and on every default, process is initiated administratively. Generally, in both of these administrative situations, default is necessary. Opportunity to dispute, in whole or in part, by the garnishee, and opportunity to dispute by the debtor, is generally provided.

The sub-committee was unable to unanimously recommend any one of these models to the Committee. One member of the sub-committee felt that judicial intervention is the most appropriate method of issuing garnishment process in maintenance enforcement. The other members of the sub-committee felt an administrative process is satisfactory, provided there is given, to the debtor, an opportunity or remedy of challenging the clerk's administrative act. The resolution of this philosophical debate would affect positions taken by the sub-committee members on the question of exemptions for the debtor.

After thorough discussions and by majority votes the Committee recommends:

RECOMMENDATION NO. 4:

Where there are arrears, there should be no requirement for a show cause judicial hearing before garnishment or attachment should issue. Moreover, the Committee as a whole, recommends that the process, where there are arrears, should be instituted automatically by an administrative official, subject to the right of the creditor to resort to judicial process for objection or relief.

EXEMPTIONS FROM GARNISHMENT:

Although the sub-committee was able to agree that every financial obligation owed to the debtor should be available to satisfy a support order, the sub-committee differed on the point as to whether there must be certain defined exemptions from garnishment.

WAGES:

A majority of the provinces have special exemptions where we are dealing with garnishment of wages for support. Certain provinces have fixed exemptions, whereas other provinces have percentage exemptions. Some provinces have no exemptions. One member of the sub-committee saw no need to have any set exemptions where a garnishment order can only be obtained by virtue of a judicial act. Judicial discretion would take into account the debtor's living needs and set the maximum garnishment order. At least one member of the sub-committee advocating administrative process felt that exemptions should be built into the garnishment legislation. One other viewpoint held that exemptions should only be allowed on applications of the debtor. The difficulty with built-in exemptions is that over the years, depending on the format used, they may be totally divorced from the financial situation of the debtor and the present cost of living standards.

In summary, there are essentially three forms of wage exemption, a flat dollar amount, percentage exemption or a discretionary exemption, whether by means of a judge ruling in a process or by virtue of a subsequent application by the debtor. One other variation is to fix a basic percentage exemption and to give the debtor and the creditor the right to vary this on notice.

The members of the sub-committee were not able to unanimously agree on a recommendation in this area, generally as it is founded on philosophical differences in the means of initiating process. Clearly, however, there must be a means of invoking judicial discretion if administrative process is employed. The maintenance debtor should have the opportunity to challenge the order or request an increase in his exemptions once a garnishment order was issued.

The matter was thoroughly discussed by the Committee as a whole and the Committee recommends for maintenance obligations as follows:

RECOMMENDATION NO. 5:

There should be no set exemptions from garnishment, subject to the right of the debtor to apply for relief in a judicial process.

JOB PROTECTION:

The sub-committee is of the view that all attachment processes should have job protection to prevent disciplining or dismissal from employment due to garnishment. Generally, a civil sanction with a lower burden of proof would be more desirable than a penal sanction. Some jurisdictions have instituted a reverse onus to overcome evidentiary difficulties in a penal sanction. The Charter of Rights and Freedoms may impact on this, however, and should be carefully considered.

RECOMMENDATION NO. 6:

There should be a civil judicial process to compensate and reinstate an employee who has been disciplined or dismissed due to garnishment.

PRIORITIES:

The sub-committee recommends as follows:

RECOMMENDATION NO. 7:

Garnishment to enforce a maintenance order should enjoy the highest priority. Wage assignments should be prohibited insofar as they would defeat a maintenance order.

The Committee, as a whole, adopted the recommendations as noted above in numbers 6 and 7.

Finally, the Committee, as a whole, discussed an appropriate vehicle for instituting its recommendations on a Canada-wide basis.

The Committee recommends as follows:

RECOMMENDATION NO. 8:

That where the Ministers accept our recommended principles on garnishment, same should be referred to the Uniform Law Conference for consideration as a Uniform Act.

PROVINCE: British Columbia

STATUTE(S) COURT ORDERS ENFORCEMENT ACT, SMALL CLAIMS ACT

PROVISION TO ENFORCE MAINTENANCE ORDERS BY GARNISHMENT	OBTAINING GARNISHEE SUMMONS	SERVICE OF GARNISHEE SUMMONS	PRIORITY	DEDUCTIONS BY GARNISHEE	VARIATION OR REMISSION OF PROVINCE ORDER	EXEMPTIONS OF DEBTOR	MISCELLANEOUS	PROCEDURE FOR INITIATING PROVISIONAL OR FINAL ORDER UNDER REMO ACT
Yes, by application on: a) On behalf b) Behalf of child c) A.C. for parent or spouse.	EX PARTE	SECTION 1 1. Effective for 1 month unless court discharges. 2. Imprisonment does not discharge arrears (see narrative) 3. Binds every employer from time to time if person in arrears. (subsequent employer must be served).	COURT ORDERS ENFORCEMENT ACT Deductions made under Provincial or Federal Acts eg: B.C. Income Tax Act.	Catches "owing payable or accruing due" within 7 days after affidavit sworn.		1. a) 50% of wages if under \$600.00 per month and 33-1/3% of wages if in excess of \$600.00 b) Minimum exemption \$100.00 per month. c) Can apply to vary exemption. 2. Payments under Criminal Injury Compensation Act is exempt.	1. Debtor may apply to pay by instalments after garnishment on Ex Parte. -notice to other party. 2. Attachment available on civil servants. 3. Execution or other proceedings available for enforcement. 4. Debt attachment book to be kept. Search available. 5. Penalty for dismissal of employee who is garnished - \$500.00/months/both. Reinstatement Plus wages and benefits. Information shall be sworn within 14 days of offence.	

PROVINCE: British Columbia

STATUTE(S)

PROVISION TO ENFORCE MAINTENANCE ORDERS BY GARNISHMENT	OBTAINING GARNISHEE SUMS	SERVICE OF GARNISHEE SUMS	PRIORITY	DEDUCTIONS BY GARNISHEE	VARIATION OR REMISSION OF HYPOTHEQUE ORDER	EXEMPTIONS OF DEBTOR	MISCELLANEOUS	PROCEDURE FOR INITIATING PROVISIONAL OR FINAL ORDER UNDER RUMO ACT
	Court or Registrar may issue. - Court Orders Enforcement Act applies.			SECTION 2 - SMALL CLAIMS ACT Claim not to exceed \$2,000.	Court discretion to alter or rescind Order for Payment.	1. No lawyer fees shall be charged against either party. a) Penalty - 20 days - unless garnishee shows cause. b) Ex Parte c) For stay, subject to security.	Compensation may be payable to debtor or garnishee on non-appearance of creditor.	

PROVINCE: British Columbia

STATUTE(S) COURT ORDERS ENFORCEMENT ACT, SMALL CLAIMS ACT

PROVISION TO ENFORCE MAINTENANCE ORDERS BY GARNISHMENT	OBTAINING GARNISHEE SUMMONS	SERVICE OF GARNISHEE SUMMONS	PRIORITY	DEDUCTIONS BY GARNISHEE	VARIATION OR REMISSION OF NOTICE ORDER	EXEMPTIONS OF DEBTOR	MISCELLANEOUS	PROCEDURE FOR INITIATING PROVISIONAL OR FINAL ORDER UNDER RMO ACT
Yes, by application on: a) On behalf b) Behalf of Child c) A.G. for parent or spouse.	EX PARTE	SECTION 1 1. Effective for 3 months unless court discharges. 2. Imprisonment does not discharge arrears (see narrative) 3. Binds every employer from time to time if person in arrears. (subsequent employer must be served).	COURT ORDERS ENFORCEMENT ACT Deductions made under Provincial or Federal Acts eg: B.C. Income Tax Act.	Catches "owing payable or accruing due" within 7 days after affidavit sworn.		1. a) 50% of wages if under \$600.00 per month and 33-1/3% of wages if in excess of \$600.00 b) Minimum exemption \$100.00 per month. c) Can apply to vary exemption. 2. Payments under Criminal Injury Compensation Act is exempt. 3. Execution or other proceedings available for enforcement. 4. Debt attachment book to be kept. Search available. 5. Penalty for dismissal of employee who is garnished - \$500.00/months/both. Reinstatement Plus wages and benefits. Information shall be sworn within 14 days of offence.	1. Debtor may apply to pay by instalments after garnishment on Ex Parte. -notice to other party. 2. Attachment available on civil servants. 3. Execution or other proceedings available for enforcement. 4. Debt attachment book to be kept. Search available. 5. Penalty for dismissal of employee who is garnished - \$500.00/months/both. Reinstatement Plus wages and benefits. Information shall be sworn within 14 days of offence.	

PROVINCE: British Columbia

STATUTE(S)

PROVISION TO ENFORCE MAINTENANCE ORDERS BY GARNISHMENT	OBTAINING GARNISHEE SUMMITS	SERVICE OF GARNISHEE SUMMITS	PRIORITY	DEDUCTIONS BY GARNISHEE	VARIATION OR REMISSION OF PAYMENT ORDER	EXEMPTIONS OF DEBTOR	MISCELLANEOUS	PROCEDURE FOR ISSUING PROVISIONAL OR FINAL ORDER UNDER REGD ACT
	Court or Registrar may issue - Court Orders Enforcement Act applies.			SECTION 2 - S.W.U. Claim not to exceed \$2,000.	Court discretion to alter or rescind Order for Payment.	1. No lawyer fees shall be charged against either party. a) Penalty - 20 days - unless Garnishee shows cause. b) Ex Parte c) For stay, subject to security.		

PROVINCE: Alberta

STATUTE(S) Domestic Relations Act

PROVISION TO ENFORCE MAINTENANCE ORDERS BY GARNISHMENT	OBTAINING GARNISHEE SUMMONS	SERVICE OF GARNISHEE SUMMONS	PRIORITY	DEDUCTIONS BY GARNISHEE	VARIATION OR REMISSION OF MAINTENANCE ORDER	EXEMPTIONS OF DEBTOR	MISCELLANEOUS	PROCEDURE FOR INITIATING PROVISIONAL OR FINAL ORDER UNDER REMO ACT
Yes, s.29(1) 1.(a) Attachment order on salary to continue for fixed time or until further payments. (b) Attachment Order may be filed as Writ of Execution to cover arrears. Writ renewable.	1. Ex Parte by Affidavit. (Alta. Rules of Court in Queen's Bench) 2.1 Must establish why unable to collect or unreasonable delay. 2.2 Ex Parte to Provincial Judge. 2.3 Restricted to amounts of arrears. 2.4 Requirements: a) in default; b) debtor in Alta.; c) reasonable poss. unable to collect without order, or will be unreasonable delay.	1. Service binds employer. 1.2 Service deemed when actually received or within 48 hours after actual service, which ever is shorter. 1.3 Service can be on any partner or agent. 2.1 All debts, obligations & liabilities (except wage & salary) payable or accruing due from named debtor. 2.2 Binds debts due or accruing or amount needed to satisfy claim "continguous" 2.3 Money deemed attached & order deemed served when notice actually received or 48 hrs whichever is shorter. 2.4 Attaches debts owing by partnership in Alberta.	2.1 Writ takes priority over any other writ up to amount payable for latest 3 month period - except claim for wages or salary. 2.2 Money paid to Clerk pursuant to order is not attachable.	1. Pay lesser of amount to person ordered to pay maintenance or amount sufficient to satisfy Order and costs. 2. Wages and salary deemed to accrue from day to day. 3. If disputed, debtor may apply to Q.B. by Notice of Motion - if money paid to Q.B. then shall be paid to Prov. Court Clk. Then paid to person entitled on Ex Parte application or other notice. 4. Provincial Judge may order maintenance as condition of adjournment.	1. Variation may be filed with sheriff. 2. On re-hearing by Provincial Judge, may confirm rescind or vary order.	Exemptions under Alberta Rules of Court (483) not available where M.O. or judgement issued.	1. Termination of employment due to garnishment for-bidden - penalty up to \$1,000. 2. Maintenance Order may be registered in Land Titles Office and binds estate and interest in any land registered - effect as a life annuity. 3. Other remedies still available. 4. Alberta civil servants liable to attachment.	1. Final Order: - Certified copy received by Attorney General - Transmitted to Alberta Court for filing - Respondent notified - Enforced under Domestic Relations Act - When arrears shown by affidavit, respondent summonsed to show cause - Respondent receives transcript of evidence and presents evidence. - Court may vary or rescind under certain circumstances 2. Provisional Order: - Clerk accepts order and summons respondent - Respondent receives applicants transcript of evidence - Respondent gives evidence - May be remitted back for further evidence - No force or effect until confirmed according to RPD state law

PROVINCE: Saskatchewan

STATUTE(S) ATTACHMENT OF DEBTS ACT

PROVISION TO ENFORCE MAINTENANCE ORDERS BY GARNISHEMENT	OBTAINING GARNISHEE SUMMONS	SERVICE OF GARNISHEE SUMMONS	PRIORITY	DEDUCTIONS BY GARNISHEE	VARIATION OR REMISSION OF MAINTENANCE ORDER	EXEMPTIONS OF DEBTOR	MISCELLANEOUS	PROCEDURE FOR INITIATING PROVISIONAL OR FINAL ORDER UNDER RRD ACT
<p>Yes, includes:</p> <p>1. Q.B. judgment or order;</p> <p>2. Extra-Provincial judgment or order;</p> <p>3. M.O. under Deserted Wives & Children's Maintenance Act;</p> <p>4. M.O. registered or confirmed under RRD Act</p> <p>5. Filiation Order under Children of Unmarried Parents Act,</p>	<p>1. M.O. must be:</p> <p>a) filed</p> <p>b) registered, or</p> <p>c) made, or</p> <p>d) confirmed by Q.B. Garnishee</p> <p>2. Summons then issued by Registrar.</p>	<p>Salary or wages then due or thereafter from time to time accruing due "continuous"</p>	<p>M.O. attachment has priority over any attachment, assignment or claim HERE or AFTER M.O.</p> <p>(Quere - Federal Income Tax priority)</p>	<p>1. Accrued under M.O. 30 days prior to service, and; instalments thereafter maturing.</p> <p>2. Shortage can be added to next instalment.</p>	<p>M.O. holder shall give written notice to Garnishee.</p>	<p>No exemptions allowed where M.O. attachment.</p>	<p>M.O. holder may proceed by other methods under Act.</p>	

PROVINCE:

Manitoba

STATUTES(S) THE GARNISHMENT ACT: THE FAMILY MAINTENANCE ACT.

PROVISION TO ENFORCE MAINTENANCE ORDERS BY GARNISHMENT	OBTAINING ATTACHMENT/ GARNISHMENT ORDER	SERVICE OF ATTACHMENT/ GARNISHMENT ORDER BINDS ATTACHMENT OF WAGE ORDER	PRIORITY	DEDUCTIONS BY GARNISHEE	VARIATION OR REVISION OF ORDER	EXEMPTIONS OF DEBTOR	REMEDIES OF DEBTOR	MISCELLANEOUS
1. CONTINUING GARNISHMENT ORDER (s.14 & 15 G.A.): to enforce a) domestic maintenance orders b) maintenance orders registered or confirmed under REMO Act.	1. Must be arrears 2. Where maintenance order registered & enforced through Family Court, designated officer may obtain G.O. from court without notice or hearing (s.31.1(10) FM Act) 3. Recipient of maintenance may obtain G.O. from appropriate court without notice or hearing. 4. Available against Provincial civil servants.	1. Attaches on wages or pension benefits due or accruing due after service on garnishee. 2. Also attaches 1 month worth of arrears when served. 3. Continues in effect until G.O. superseded, revoked or withdrawn, debt is fully paid, or debtor no longer employed by or receiving pension benefits from garnishee.	1. CONTINUING GARNISHMENT ORDER -priority over any other G.O. or debt owed by debtor to garnishee (s.14(5) G.A.) 2. Neither type of G.O. attaches to deductions by employer from wages under Provincial or Federal legislation.	CONTINUING GARNISHMENT ORDER: - garnishee may deduct fee of \$1.00 per payment in compliance with G.O. (s.14(4) G.A.)	CONTINUING GARNISHMENT ORDER: -where maintenance order varied, new G.O. and service necessary (s.14(3) G.A.)	1. RE: Wages: - \$250.00/month or prorated for part of the month. (s.8 G.A.) 2. Exemptions ordinarily available under Executions Act and Judgments Act not apply (s.29 FMA)	1. Application to Clerk of Court to increase exemption re: wages -appeal to Judge -maximum increase to 90% of wages 2. Application to Judge to discharge, etc. G.O. 3. Lump Sum G.O.: -apply to clerk to release on terms -appeal to court	1. Where maintenance Order is enforced through Family Court money attached is paid into Court. 2. Continuing and Lump Sum G.O.'s can be used concurrently as Continuing G.O. catches regular payments due under maintenance order and arrears. 3. Discharge of employee because of garnishment prohibited by Employment Standards Act.
2. ONE TIME LUMP SUM GARNISHMENT ORDER (s.5 G.A.) -to enforce a) domestic maintenance orders b) interpreted to apply to maintenance orders registered or confirmed under REMO Act. c) duly executed separation								

PROVINCE: Ontario

STATUTES(S) FAMILY LAW REFORM ACT; UNIFIED FAMILY COURT RULES; SUPREME COURT RULES; PROVINCIAL COURT RULES; SMALL CLAIMS COURT ACT; PENSION BENEFITS ACT; WAGES ACT

PROVISION TO ENFORCE MAINTENANCE ORDERS BY GARNISHMENT	OBTAINING ATTACHMENT/ GARNISHMENT ORDER	SERVICE OF ATTACHMENT/ GARNISHMENT ORDER DURING ATTACHMENT OF WAGE ORDER	SERVICE OF ATTACHMENT/ GARNISHMENT ORDER DURING ATTACHMENT OF GARNISHMENT ORDER	PRIORITY	DEBTS/CLAIMS BY GARNISHMENT	VARIATION OR REMISSION OF PAYMENT ORDER	EXEMPTIONS OF DEBTOR	REMEDIES OF DEBTOR	MISCELLANEOUS
1. Attachment of wages (s.30 Family Law Reform Act) - to enforce (a) domestic maintenance orders. (b) maintenance orders registered or confirmed under REMA Act. 2. Garnishment - to enforce (a) & (b) 3. Available against Provincial civil servants.	1. Attachment of wages - judge may make order on default hearing (after notice) under FLRA Act. 2. Garnishment (a) Family Court - request filed - clerk of court issues garnishment notice - where no payment, court issues order (unless is disputed) (Uniform Family Court & Provincial Court Rules) (b) Supreme Court - court may make order on ex parte application (Supreme Court)	1. Attaches on continual basis, wages due when order served, or thereafter due. 2. Garnishment (a) Family Court - request filed - clerk of court issues garnishment notice - where no payment, court issues order (unless is disputed) (Uniform Family Court & Provincial Court Rules) (b) Supreme Court - court may make order on ex parte application (Supreme Court)	1. Attaches debts, wages, pension benefits owing or accruing at time of service on garnishee (s.145 Small Claims Act) 2. Aimed at a single debt or payment only. 3. Where debt not payable at time of garnishment, Supreme Court may order payment thereon when it becomes payable.	1. Attachment of Wages Order; - priority over any other seizure or attachment of wages arising before or after service or order (s.30 (3) FLRA Act) 2. Garnishment - subject to rights of other persons.	1. Garnishment Order made by Supreme Court. - \$3,000 for costs of paying into Court.	1. Attachment of Wages Order; - where application made to vary maintenance order, court may discharge, vary or suspend.	1. Attachment of Wages Order - s.7 of Wages Act providing 70% exemption not applicable. 2. May apply to court for release of G.O. on terms (s.8 Wages Act).	Garnishment 1. may file dispute in court. - summary court hearing to determine matter. 2. May apply to court for release of G.O. on terms (s.8 Wages Act).	1. Under automatic enforcement system in Family Court - payments made through court. 2. Discharge of employee because of garnishment or attachment proceeding prohibited by Employment Standards Act.

PROVINCE: QUEBEC

STATUTES(S) CODE OF CIVIL PROCEDURE, SECTIONS 622 - 659.10

PROVISION TO ENFORCE MAINTENANCE ORDERS BY GARNISHMENT	OBTAINING ATTACHMENT/ GARNISHMENT ORDER	SERVICE OF ATTACHMENT/ GARNISHMENT ORDER BINDS ATTACHMENT OF WAGE ORDER	PRIORITY	DEDUCTIONS BY GARNISHEE	VARIATION OR REMISSION OF NOTICE. ORDER	EXEMPTIONS OF DEBTOR	REMEDIES OF DEBTOR	MISCELLANEOUS
Continuing Garnishment of Wages (s.641.1) -to enforce: a) domestic order of support b) foreign order of support registered or confirmed under RPD Act "One-Time" seizure by garnishment to enforce above.	1. Writ of Seizure by garnishment issued by Court. 2. Where salary garnished, garnishee to file declaration and deposit each month till debt paid. 3. Where no garnishment of salary, garnishee makes declaration in court, debtor required to show cause why seizure invalid & prothonotary orders payment (s.625 & 637) 4. Collector of Support Payments may take these proceedings on behalf of recipient (s.639.3)	1. Attaches payments to become due under maintenance order as well as arrears (s.641.1) 2. Continues until release given by prothonotary -not available till one year after all arrears paid (s.641.1) 3. If debt not satisfied, new seizure needed.	1. Continuing Garnishment of Wages -where are other creditors "support creditors" receives 50% of amounts deposited each month, (up to amounts due) (s.647) 2. Garnishment -priority determined by date of service of writ.	1. "One-Time" Garnishment -garnishee entitled to witness fees re declaration made in court.	1. Continuing Garnishment of Wages -where maintenance order varies, amount of seizure amended accordingly on service of order of variation on the prothonotary.	The income exempted under the Code of Civil Procedure is also exempted in the case of a debt for support but only to the extent of 50% (s.553, last paragraph).	1. Garnishment of Wages - Continuing and "One-Time" 1) Debtor may oppose seizure on service of copy of declaration (s.641.3) 2) Application for release by prothonotary where no other creditors on record, arrears paid and debtor make payments required under order to court (s.659.5) 3) Where debtor voluntarily & regularly deposits "sizeable portion" of wages with court within 5 days of payment.	1. A creditor may challenge the amount of wages paid to debtor if are clearly less than value of services (s.649) 2. If wages exempt from seizure, upon motion to court, debtor can be brought in and ordered to deposit part of wages in court on regular basis (s.651) 3. Discharge of employee because of garnishment prohibited and rebuttable if presumption exists where garnished employee is dismissed (s.641)

GARNISHMENT FOR MAINTENANCE
IN THE ATLANTIC PROVINCES

I. NEW BRUNSWICK -

(A) PROVINCIAL LEGISLATION -

The Child & Family Services and Family Relations Act, S.N.B, 1981, Chap. 2.1 -

This act was amended in June 1982 to alter previous provisions allowing for a Payment Order only on a show cause hearing by providing for a Payment Order without prior notice and without a hearing subject to the right of the respondent to show cause why the Payment Order should be set aside or varied. (See s. 123(5) and s. 125(5))

The amendments further allowed a Payment Order to be made at the time a support order is made, as well as when the respondent has been summonsed to a show cause hearing.

A judge may designate a clerk master or other officer of the court to consider and dispose of default applications in which case the order of the clerk shall be the order of the court unless the clerk is of the opinion that the respondent should be imprisoned, where the matter must be referred to the judge. (See s. 123(6)).

There are further provisions relating to priorities over any other assignment of wages, attaching orders, etc; penalties against employers for failure to comply and employee discriminations, reinstatement, etc.

In summary, in N.B. a Payment Order may be made:

- (1) By the judge when the support order is made.
- (2) By the judge at a show cause hearing without prior notice.
- (3) By the judge without a show cause hearing and without prior notice.
- (4) By the clerk without a show cause hearing and without prior notice.

Monies subject to garnishment are not just wages but any amounts that are due or will become due to the respondent. Thus a Payment Order can be directed to any person who owes money to the respondent.

(B) RULES OF COURT -

Rule 72 pursuant to S. 19 of the Divorce Act provides that the Court may make a Payment Order:

- (1) when it makes an order in the 1st instance for periodic sums under S. 10 or 11 of the DV Act.
- (2) on Notice of Motion, when there is default and at a show cause hearing.
- (3) when an application is made for attachment or seizure & sale,
- (4) when an application is made for contempt.

It would be desirable to have this rule changed to allow for enforcement in the same manner as under the provincial statute.

In N.B. both orders for maintenance made pursuant to the Divorce Act, (Canada) and pursuant to provincial legislation are enforced in the Court of Queen's Bench, Family Division (Unified Family Court).

II. NOVA SCOTIA

A. PROVINCIAL LEGISLATION

Family Maintenance Act, S.N.S. 1980, C.6

Section 39 of the act provides that at a show cause hearing the Judge may issue an Execution Order following the procedure and form for an Execution Order provided in the rules of the Supreme Court.

Subsection 2 states where the Execution Order provides for the seizure of wages, the Judge may determine the maximum amount of wages to be seized on a periodic basis and this amount shall be set out in the Execution Order.

B. RULES OF COURT

Rule 53 applies to Execution Orders generally; more particularly, Section 53.05 provides for garnishment of wages by way of an Execution Order directed to a sheriff. Such an Execution Order limits garnishment to 15% of the gross wages of an employee, with a further requirement that when the net wages after ordinary deductions is reduced to the amount of \$250.00/week, then only the difference by which payment of the 15% exceeds \$250.00 shall be paid to the sheriff.

The rule also allows punishment for contempt for employee discrimination because of seizure of wages.

III. PRINCE EDWARD ISLAND

A. PROVINCIAL LEGISLATION

Family Law Reform Act, S.P.E.I. 1978, C.6

Section 28 & 29 are the pertinent provisions for enforcement of Support Orders. In conjunction with a show cause hearing the court may make an attachment order under the authority of Section 30 directing the employer to deduct from any remuneration due or thereafter accruing an amount which cannot exceed the maximum for attachment under Section 17 of the GARNISHEE ACT.

There are also provisions for priorities and variation of the attaching orders.

Section 17 of the Garnishee Act provides an exemption from garnishment on wages due or accruing to any judgment debtor for his personal labour and services, sums in such amounts and for such purposes as are set forth in regulation. The amount of exemption is to be calculated by either the prothonotary or the clerk on the basis of an exemption for each "item of basic need", prescribed by regulation and further that in no case shall the exemption leave the judgment debtor with less income than he would receive on social assistance.

B. RULES OF COURT

There is no provisions under Rule 57 pursuant to the Divorce Act or in the general rules of court in relation to garnishment of wages.

IV. NEWFOUNDLAND

A. PROVINCIAL LEGISLATION

Maintenance Act R.S.N. 1970, Chap. 223

There is no specific provision for garnishment in this act however, section 13 subsection(2)(d) provides that the Court "may impose upon the person in default such conditions as under the circumstances the judge deems advisable".

ATTACHMENT OF WAGES ACT R.S.N. 1970 Chap.16

This act has very specific provisions and exemptions for the attachment of wages or salaries.

Section 7 of the act states "nothing in this act applies to attachment or execution which is issued under a judgment or order[for maintenance]". Presumably this means that garnishment is available for enforcing Maintenance Orders but the limitations do not apply.

B. RULES OF COURT

There are no specific provisions in the Rules of Court in relation to garnishment to satisfy maintenance obligations.

APPENDIX "D"

Statistics on
Maintenance and Custody Orders

Research and Statistics Section
Department of Justice

April 1983

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Introduction

The federal representative on the Information Sub-Committee of the Federal Provincial Committee on Enforcement of Maintenance and Custody Orders agreed to report on the available statistics relating to custody and maintenance order enforcement. Gina Alderson canvassed representatives in each province to ascertain the available statistics, and the following is a presentation of statistics collected by each province with a brief explanation of what these statistics represent. Following the presentation of existing data on defaults in maintenance orders and violations in custody orders, consideration is directed at what questions would need to be answered in order to identify measures that might improve enforcement and the data that would need to be collected to answer these questions.

Methodology

Interviews were conducted with approximately three representatives from all provinces with the exception of Alberta. Initially, contact was made with provincial representatives on the Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders. Their cooperation was sought to obtain information and to obtain the names of other provincial contacts who might be able to provide further information. Interviews were then conducted with each person in charge of collecting the available statistics. Typically this involved an initial contact to explain data needs followed by a request to forward copies of reports or print-outs presenting the data, the categories of the data collected, and any pertinent comments or information to contextualize the available statistics. All interviews were conducted with either federal or provincial government representatives, as private sector groups generally are not involved in the collection of statistics.

One of the major problems with the current collection of information on maintenance and custody orders is that most existing Canadian descriptive material is not substantiated by statistics. There is an abundance of literature describing and restating the same problems, and the injustices inflicted by them, without basing these problems on empirical data or recommending specific solutions.

Available Statistics

The only statistics collected on maintenance and custody orders, which includes orders made ancillary to the Divorce Act and under provincial laws, are kept by provincial governments. The information collected varies greatly from

province to province, and there is no uniform category of collection across Canada. Defaults in payment of support orders are not recorded consistently. In some cases support debtors fail to pay at all, while others miss a payment here and there, or pay on schedule but in a lesser amount than the order stipulates. Default is very much a question of degree, and statistics, if they are to be meaningful, must take that into account.

In addition, the collection of statistics on maintenance and custody orders within each province is still in the developmental stage, with problems ranging from no collection (Prince Edward Island), to collection only in a few areas of the province (Newfoundland, New Brunswick, Saskatchewan, British Columbia), to uniform collection throughout the province but with problems within the collection system itself (Manitoba). Without data which can be compared, regional and national trends in the enforcement of maintenance and custody orders cannot be ascertained.

As the statistics are not gathered on similar dimensions, and no meaningful comparisons can be made of the numbers themselves, the researcher has prepared a table of the types of information available, followed by a brief description of the statistics collected in each province. The following list of questions was used in obtaining the information for the table:

- 1) Are statistics kept on the total number of maintenance orders?
- 2) Are statistics kept on the number of defaults in the payment of each original maintenance order?
- 3) Are statistics kept on the total number of court enforcement actions for each maintenance order?
- 4) Is it possible to cross reference the available statistics with the specific enforcement legislation used to enforce the order?
- 5) Are statistics kept on the dollar amount of maintenance collected?
- 6) Are statistics available on custody orders?
- 7) Are statistics available on enforcement of foreign orders (R.E.M.O.)?
- 8) Is the data collection uniform for the whole province?

- 9) Can the available statistics be used to project data for the whole province?
- 10) Is the data collection system manual or computerized?
- 11) Is there a projected change in the data collection system in the near future?
- 12) Does the province have state initiated enforcement?

(State initiated enforcement is defined as the initiation of enforcement proceedings by the state rather than the creditor spouse in the event of default).

Question	NPLD.	P.E.I.	N.S.	N.B.	QUE.	ONT.	MAN.	SASK.	ALTA.	B.C.
1	NO	****	YES	NO	NO	NO	NO	NO	note 1	NO
2	YES		NO	YES	YES	YES	YES	NO		YES
3	NO		NO	YES	NO	YES	NO	NO		NO
4	NO		NO	YES	NO	NO	YES	YES		NO
5	YES		YES	NO	NO	NO*	YES	NO		NO
6	NO		NO	NO	NO	NO	NO	NO		NO
7	YES		NO	YES	YES	YES	YES	NO		NO
8	NO		YES	NO	YES	YES	YES	NO		NO
9	NO			NO				YES		NO
10	MANUAL		MANUAL	MANUAL	MANUAL	COMPUTERIZED	COMPUTERIZED	MANUAL		MANUAL
11	YES		POSSIBLY	YES	NO	NO	YES	YES**		YES
12	NO***	YES	YES	YES	NO	YES	YES	NO		YES

Note 1: No response.

* This information was kept up to and including 1979-80.

** There is currently a submission before the provincial Treasury Board, seeking approval for funds needed to implement automatic enforcement.

*** Ledger cards are monitored once a month, however in the case of defaults the creditor spouse has usually notified the court by this time.

**** Presently does not gather any statistics but because of size of province, this could easily be done given specific requests, and sufficient time.

Statistics By Province

Newfoundland

In Newfoundland, statistics are only collected by the Unified Family Court in St. John's. Approximately one quarter of the population falls within the jurisdiction of this court; however, the information collected is not representative of the entire province.

The Unified Family Court in St. John's has a state initiated enforcement program. Ledger accounts are, however, only monitored once a month and enforcement proceedings commenced at this time. Since cases in default are not enforced immediately by the state, enforcement proceedings may have already been initiated by the creditor spouse. It is estimated that 80% of those creditors who did not receive payments on time had to initiate action themselves.¹ The court presently does not have the staff necessary to improve this system.²

A ledger account is created only when support orders are made payable into court. Payment into court is mandatory only when the creditor spouse is on social assistance. In all other cases, payment into court is voluntary and is usually influenced by the recommendation of the creditor's lawyer. The 1982 Unified Family Court evaluation estimated that between 30 and 40% of maintenance payments are made privately.³

As of October 31, 1982 of the 587 ledger accounts registered in St. John's, 193 were in arrears, 52 were temporarily suspended and the remaining 342 were foreign orders. Approximately half of all ledger accounts (297) involved recipients of Social Assistance. In 1982 it was projected that the Unified Family Court would collect a total of \$700,000.00.

No statistics are kept on custody orders.

Prince Edward Island

The province does initiate enforcement, but no statistics are kept on either maintenance or custody orders. It is virtually impossible to collect statistics on custody orders under the present system.⁴ Given the size of the province, however, statistics on maintenance orders could easily be collected.⁵

Nova Scotia

Nova Scotia keeps a uniform, province-wide record of all maintenance and custody orders paid into court, regardless of default, and a record of all private agreements to pay maintenance into court. These private agreements and court orders are referred to as active orders. Unfortunately, as the statistics collected reflect a combination of both maintenance defaults and custody violations, neither is identifiable.

In the 1981-82 fiscal year, there were 6,957 active orders. In addition to these, there were 576 inactive orders and 1,862 were rescinded. Inactive orders include those where the payors could not be located and those placed in abeyance by the court for a specific period of time (e.g. due to illness, unemployment, attempts at reconciliation). Some judges will rescind an order if the debtor spouse cannot be located for three years, while others may never rescind an order.

Since the statistics kept on the number of enforcement proceedings commenced in court, involving both maintenance and custody violations, are not cross referenced with up-to-date orders, it is impossible to determine the proportion of total maintenance orders in default. To determine the degree and number of defaults it would be necessary to record the number of actions commenced to enforce each court order. There were 5,604 custody and maintenance orders which were enforced by court action in 1981-82.

A record is kept of the total dollar amount of maintenance awards due and collected each month. As the amount of arrears collected is also included in the total dollar amount collected, the actual amount in arrears is not identifiable.

Manual data collection and the lack of person years available to collect data, restrict the amount and type of data that can be collected.

New Brunswick

Data collection in the province of New Brunswick is currently in a state of transition. Uniform data collection is projected for 1983 as the current practises of the Fredericton Unified Family Court will be extended throughout the province.

The data collected in Fredericton is exemplary of the categories of information that will be collected, but at present it is not numerically representative of provincial trends.⁶

The 395 maintenance cases monitored, as of October 1982 in the Fredericton Unified Family Court, represent only those orders in which payments are to be made into court. This total is comprised of 380 cases carried forward from the previous month plus 15 new maintenance cases, minus the number of cases terminated, which was nil. Cases terminated include those transferred out of the province or in which the debtor or creditor has died.

A daily and monthly record is also kept on the total number of court actions commenced to enforce support.

Presently, there is no regular collection of information on custody order violations. The Unified Family Court is in the process of revising its forms, and the new court form will request information on the violation of custody orders.

New Brunswick is currently experimenting by introducing administrative procedures in an attempt to reduce the amount of court time required to enforce orders in default. Recent amendments to the Child and Family Services and Family Relations Act give the Court Administrator quasi-judicial powers to review default cases.

Quebec

All available statistics in Quebec are uniform throughout the province. From the commencement of the collection program in Quebec in January 1981, the aggregate number of court orders requiring collection by the state totalled 8,089. As Quebec does not have state initiated enforcement, enforcement must be initiated by the creditor for each incidence of default. The creditor spouse initiates collection by contacting the "percepteur" (provincial collector*), and the order is recorded for statistical purposes as a case of default.

*Author's Translation

The figure of 8,089 cases of default represents the total number of orders, either currently in default or at one time or another submitted to the state for collection.

Cases are broken down into local orders (6,602), foreign orders (1,487) and local orders sent outside the province for enforcement (1,510). Information is also maintained on the number of successful injunctions, garnishments and liens.

The figure of total dollar amounts collected on defaults represents only those payments made to the percepteur and not payments made privately. In 1981, a total of \$794,818 was collected by the percepteur.

No information is collected on custody orders.

Ontario

In Ontario, province wide statistics are collected on the number of current accounts. Current accounts are maintained for each maintenance order where the creditor spouse has signed a written agreement enabling automatic enforcement by the province and where a minimum of one payment per year has been received. It must be noted that by these requirements, the record of current accounts does not necessarily reflect defaults. There were 44,180 current accounts in the 1981 fiscal year.

There were 11,432 enforcement orders, that is, orders where court action was initiated. This omits debtors who defaulted, but for various reasons (e.g. could not be located), did not have a summons served. As there is no way to determine how many enforcement orders are issued on any given current account, it is impossible to derive the actual number of defaults.

As in all provinces with state initiated enforcement, a period of "grace" is allowed between the actual default, the warning letter and the court summons. Clearly those who pay only before the summons is served are technically in default; however no province keeps information on these types of defaults.⁷

Although a record is kept of the total maintenance dollars collected (\$40,437,837), because the dollar amounts may include arrears, it is not possible to cross reference this figure with enforcement orders (11,432), to determine what proportion of dollars require court action, nor with current accounts (44,180) to determine the average collected for each case being monitored regardless of default.

Manitoba

Manitoba collects uniform data for the entire province. Up to September 30, 1982, there were 6,088 ledger accounts monitored. Ledger accounts include all orders made under the Family Maintenance Act, which are enforced by a court, and any order made under the Divorce Act which states that "sections 31.1 and 31.2 of the Family Maintenance Act shall apply". That is, unless the creditor spouse, with the consent of the debtor spouse, does not register the divorce order in the automatic enforcement program. Thus, no record is kept of private agreements and divorce orders which do not expressly contain the above wording.

These ledger accounts are subdivided into Reciprocal Enforcement Maintenance Orders "in" (REMO in), REMO "out", local orders and closed cases. Cases are only closed when the order is terminated, for instance when one of the parties dies. These categories are further broken down to identify the number of support orders made. There are no statistics on the number of defaults within the monitored group.

Records are also maintained on both the amount due and arrears: received by the court; collected for clients on social assistance; and collected for those on partial assistance. The statistics have been found to be inaccurate, and a new program for their collection will be implemented in 1983.⁸

In Manitoba, the Department of Community Services and Corrections maintains detailed information on the category "REMO out", that is, the enforcement of Manitoba orders in another province. As of November 8, 1982, 40% of the 1,076 REMO "out" orders (376) were in default, most arrears totalling less than \$2,000.00. Over 70% of defaulters (376) missed one or more payments, but less than 30% of this group were seriously in default (defined as over \$2,000.00).⁹

Statistics are not maintained on custody orders.

Saskatchewan

No statistics are collected on either maintenance or custody orders in Saskatchewan with the exception of the Unified Family Court in Saskatoon.

There were approximately 950 maintenance actions in Saskatoon in 1981. This figure is an estimate, as the statistics are kept according to "actions commenced by originating motion", with maintenance and custody orders combined in one category.

Extrapolating from Saskatoon's figures, there were approximately 3,800 maintenance actions commenced in Saskatchewan in 1981.¹⁰

Statistics are maintained on actions commenced by originating motion, that is, motions under the Unified Family Court Act. As there is no state initiated enforcement system, and as court orders do not generally require payment to be made into court, there are no statistics available on defaults.

A submission was recently prepared for the provincial Treasury Board requesting funds to create a state-initiated enforcement system; however, presentation of the request is delayed pending the acquisition of hard data to support the premise that such a system is cost effective in reducing the welfare roles.¹¹

British Columbia

The provincial Cabinet is presently considering a plan for dealing with maintenance and custody orders on a province-wide basis. Details as to what this system would include are not available at this time.¹²

Statistics are only collected on maintenance orders in one pilot project involving state-initiated enforcement. Presently, the data collected represents a small portion of British Columbia, namely, Vancouver Island and approximately two-thirds of the interior region. This information cannot be extrapolated to represent provincial trends, as it does not include Vancouver (the Human Resources Ministry in British Columbia estimates that fifty percent of all single parents in the province live in Vancouver).¹³

In the two regions being monitored, there were 3,390 cases of default as of October, 1982. This includes all orders enforced in provincial courts, i.e., those orders which the court directs to be paid into court, and both voluntary agreements and divorce orders for which the creditor spouses have applied for state-initiated enforcement.

Although a record is kept of the number of payments received and their dollar value, it is not possible to derive the total number of defaults because these records include arrears of payments in a non-identifiable form.

As previously mentioned, in all state-initiated enforcement systems, the data does not reflect technical defaults. To illustrate this, a study of 100 payment samples was conducted in Victoria over a 6 month period and it was found that approximately 10% of the orders remained technically defaulted.¹⁴

The Type of Statistics that should be Collected

The two most important questions which need to be answered in order to improve the enforcement of maintenance orders are: who is defaulting on maintenance orders; and what method of enforcement is most effective? In order to answer these questions, the following categories of information would have to be obtained.

- 1) Total maintenance orders issued and total defaults. In order to compare, among provinces, the numbers of all maintenance orders in default, it is necessary to record all maintenance orders issued and all defaults of each order. To determine the number of defaults of each order, a record must be kept of each default of the original maintenance order, referenced to all future defaults of that order. To obtain consistent, uniform and unambiguous results, it would be necessary to set a standard as to what constitutes a default, both in terms of the length of time in arrears and the dollar amount.
- 2) Profile of defaulters. Obviously there are many factors which influence default, including those stemming from personal attitudes and those resulting from the adversarial nature of court proceedings in divorce and family law matters¹⁵. It is impossible to clearly distinguish the two, but the literature on default does outline two major factors: firstly, the debtor's perception of his or her responsibility to pay and secondly, the debtor's perception of his or her ability to pay.
 - a) Perception of the Responsibility to pay

Though few studies have attempted to measure this directly,¹⁶ there is, in most reports, the sense that many men who define themselves as unable to make payments, could, at the very least, make partial payments if they were to view this as a priority. Ideally one would want to keep information on these attitudes; however, this implies a level of data collection which is not feasible on a continuous basis. An indirect

measure that would allow some consideration of this influencing factor would be collection of statistics showing the rate of default according to each type of court procedure, for example, the rate of default resulting from court proceedings which use mediation and conciliation services. By this measure, one could get some sense of whether a particular court procedure was affecting the number of defaults. While this would not necessarily imply a change in attitude, it would imply that levels of payment or non-payment could vary by factors other than ability to pay, and it could demonstrate how each method affects the perception of one's responsibility to pay.

b) Ability to pay

Equally important in discovering who is defaulting and what system best alleviates this problem, is the ability of the debtor spouse to meet payments. The direct measure of this is income. The impact of ability to pay (income) on enforcement strategies is clear. For example, methods such as garnishment, seizure or imprisonment would not eliminate instances of default arising from inability to pay.

Statistics on income would clearly set out what percentage of defaulters could meet maintenance payments. This would allow, at least theoretically, an estimate as to the percentage of debtors on whom enforcement procedures, such as those listed above, would be successful.

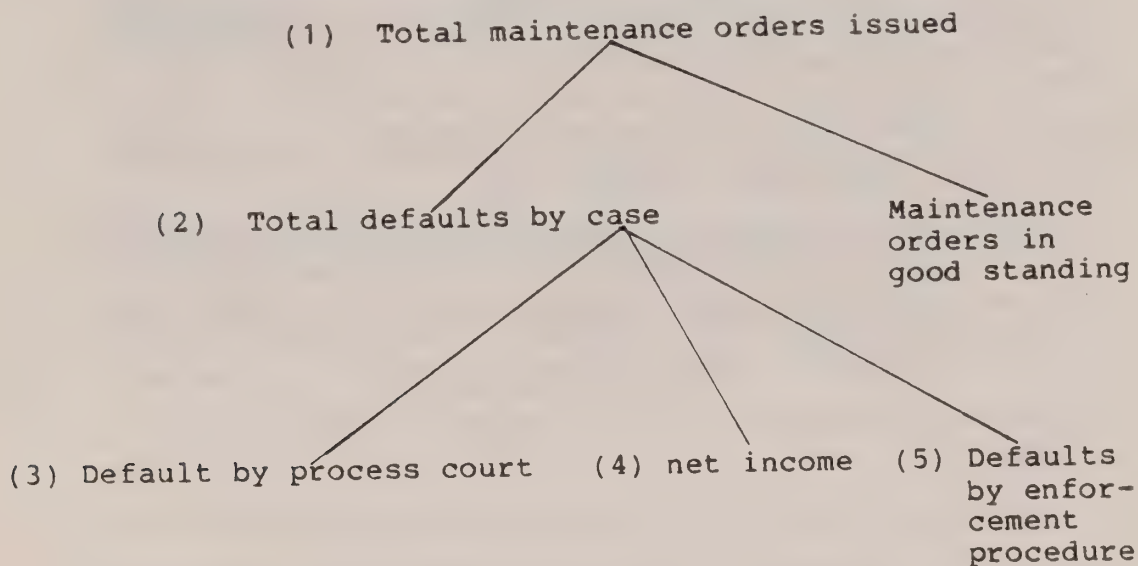
One could then cross reference the number of defaults occurring with each court procedure to the amount of income in order to derive the different causes of default. With this information, the most effective enforcement procedure could be determined.

- 3) Success of enforcement procedures. There is no doubt that some enforcement procedures are more effective than others. The most effective methods have yet to be determined and verified empirically. One study has suggested that better enforcement measures, such as garnishment and imprisonment, may lead to considerable resistance¹⁷ on the part of debtors and therefore increase the number of defaults. Another study has demonstrated that frequent and immediate notification,

to the debtor, of the state's awareness of default and its possible consequences, in conjunction with strong enforcement measures such as imprisonment, substantially decreases the number of defaults.¹⁸ Thus, statistics kept on the success of enforcement procedures would allow the development of a more rational enforcement system.

Summary

As a minimum, statistics should be maintained in the following areas:



This data would yield the most useful information on which to construct a more effective enforcement system. This information focusses not only on the actual enforcement, but also on factors which lead to default. The reduction of the number of defaults would also reduce the need for enforcement.

There are, however, two major qualifications to the implementation of this system. While there are currently 10 different systems for collecting statistics on maintenance, no statistics are being collected on custody orders.

Within the time constraints of this study, the researcher was not able to assess what information should be gathered on custody orders. However, as can be seen in the table, there is, without exception, no systematic information being collected on custody orders. Data on the numbers of violations of custody orders is therefore needed in order to assess the magnitude of the problem and to consider rationally the methods for improving the enforcement of custody orders.

Footnotes

1. A.S. Ross and M.J. Grant, An Evaluation of the St. John's Unified Family Court Pilot Project, August 1982, p.169.
 2. Interview, Unified Family Court Administrator.*
 3. A.S. Ross and M.J. Grant, op. cit., p. 76.
 4. Interview, Unified Family Court Registrar.*
 5. Interview, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada - Committee member.
 6. Interview, Research Assistant, Research and Planning Division, Department of Justice.*
 7. Interview, Manager of Information Services, Ministry of the Attorney-General. Note: Although the period of "grace" varies by province the researcher verified that all provinces with automatic enforcement allow this time lag for late payments.*
 8. Interview, Maintenance Enforcement Officer, Family Court.*
 9. Interview, Director of Marriage Conciliation Service.*
 10. Interview, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada - Committee member.*
 11. Ibid.
 12. Interview, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada - Committee member.
 13. Interview, Research Officer, Ministry of the Attorney General.*
 14. Ibid.
- * provincial representative responsible for the collection of statistics.

15. Frontenac Family Referral Service, Couples in Crisis, 1980, p.67.
16. There are a few notable exceptions. The Frontenac Family Referral Service, in their report Couples in Crisis, 1980, state that conciliation leaves choices open to the man that allow him to retain his dignity and self-esteem (p. 17), that many of those who did not benefit from conciliation failed to understand that monies paid were for the support of their children (p. 57), that 51% of conciliation agreements compared to 27% of court orders were paid regularly without enforcement (p. 67) and that 25% of a sample group which used both conciliation and court orders were in arrears compared to 52% of the court only group (p. 62). This evidences an attempt to measure the effects of preventative methods in enforcement. This perspective also formed the basis for the report issued by the Institute of Law Research and Reform, Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved.
17. The Institute of Law Research and Reform, Ibid.
18. Chambers, D.; Making Fathers Pay.

Appendix 1

TABLES OF AVAILABLE STATISTICS
- BY PROVINCE

NEWFOUNDLAND



THE SUPREME COURT OF NEWFOUNDLAND
UNIFIED FAMILY COURT

GENERAL OFFICE
(709) 753-5873

21 King's Bridge Road
St. John's, Newfoundland
A1C 3K4

December 8, 1982.

Ms. Gina Alderson
731 Justice Building
Kent and Wellington
Ottawa, Ontario
K1A 0H8.

Ms. Alderson:

RE: Statistics RE Maintenance and Custody Orders

Further to our recent telephone conversations, I am forwarding this brief memo and status of maintenance collections at October 31, 1982.

The Unified Family Court, Supreme Court of Newfoundland, presently has 587 Ledger or Maintenance Accounts registered. Of these 587, 193 are in arrears, 52 are temporarily suspended, and the balance of 342 accounts are current. A total of 297 of the 587 accounts/clients are noted as also being recipients of Social Assistance through the Province's Department of Social Services. In October, 1982, \$50,069.00 was collected by the Unified Family Court and our yearly total will be approximately \$700,000.00.

Please do not hesitate to request more detailed information regarding the above. We will appreciate a written request with a precise detail of statistics necessary, if possible.

Yours truly,

Carol O'Brien
(Mrs.) Carol O'Brien,
Court Administrator,
Unified Family Court.

mlk/

cc: M. Noonan and
R. G. Penney, Department of Justice.

NOVA SCOTIA

PROVINCE OF NOVA SCOTIA
DEPARTMENT OF SOCIAL SERVICES
FAMILY AND CHILDREN'S SERVICES
FAMILY COURT FOR THE PROVINCE OF N. S.

REGION	COURT ORDERS		NO. OF COURT ORDERS RES- CINDED	NO. OF COURT VIOLATIONS	ACTIVE ORDERS	A M O U N T S		
	ACTIVE ORDERS	NO. OF INACTIVE ORDERS				TOTAL OF EXISTING ORDERS (Monthly)	AMOUNTS DURING MONTH	COLLECTED SINCE APRIL 1
HALIFAX / DANFORTH	2,796	235	662	1,101	\$371,679.25	332,250.91	3,532,427.95	
CAPE BRETON	1,151	11	393	1,809	179,942.59	135,819.64	1,421,308.11	
PORT HARRISBURY	153	2	47	149	20,717.00	15,979.09	172,072.33	
NORTH SHORE	844	202	196	372	112,985.00	87,792.00	892,257.00	
CUMBERLAND	244	47	72	138	22,539.00	20,749.33	212,060.20	
CENTRAL	954	34	278	487	105,001.84	93,079.75	964,509.59	
WESTERN	835	45	214	1,548	73,389.00	68,428.34	673,330.88	
TOTALS	6,957	576	1,862	5,604	\$ 886,253.68	754,099.06	7,867,966.06	

NEW BRUNSWICK

FORM "D"

Date November 5, 1982

COURT OF QUEEN'S BENCH - FAMILY DIVISION

Maintenance and Enforcement
Monthly Record

Judicial District Fredericton For Month of October, 1982

1.	Number of cases carried forward	380
2.	Number of new maintenance cases during month	15
3.	Number of cases terminated	0
4.	Total bookkeeping caseload for month (1+2-3=4)	395

ADULT STATISTICS - COURT ADMINISTRATION

For Month of October, 1982 Judicial District Fredericton

Activity		Criminal Code	Divorce Act				Child and Family Services and Family Relations Act										Total					
			Contested	Uncontested	Variation	REHO	Marital Property	Judicature Act	Schools Act	Maintenance	Custody	Access	Adoption	Child Security	Parentage	Separation Agreement		Variation of Maintenance	Enforcement	Habeas Corpus	Infirm Persons Act	Change of Name Act
1.	Information Laid	4																				4
2.	Plea - Guilty																					
3.	Plea - Not Guilty																					
4.	Application Filed		32	3	4	1		12	4		12	2	3	1	1			3				77
5.	Enforcement - Affidavit of Default				2											4						6
6.	Social Arm Involvement (Pre-court)		1					8	3				1		1							14

Disposition	CC	CCN	CCN	Var	Remo	MPA	Jud	SA	Min	Cus	Acc	Adop	CS	Ent	Agree	Var	Ent	HC	TPA	CN	Other	
1. Withdrawn	2		1			1			2	1			1				1					9
2. Dismissed		1	1																			2
3. Adjourned	2	3	2	1	2	8		1		1		6										26
4. Final Order	1	5	25	3		1		8	1		8	1					6	1				60
5. Consent Order			1	1		1		5	1													9
6. Interim Order																						
7. Provisional Order Made																						
8. Provisional Order Confirmed					1																	1
9. Foreign Order Enforced																						
10. Local Order - Foreign Enforcement																						
11. Warrant Issued	1							1														2
12. Judgement Reserved						1		1	1													3
13. Social Arm Involvement		3	2	2		1		12	2								4					26
14. Administrator's enforcement									5								8					13
15. NO ORDER MADE					1			2								1	1					5
16. NOT SERVED								2														2

Total Number - Heard in French Total Number - Heard in English

QUEBEC

Greffes 22. TOTAL DES RÉGIONS

Préparé par:

	JANV.	FÉV.	MARS	AVRIL	MAI	JUIN	JUILL.	AOUT	SEPT.	OCT.	NOV.	DÉC.	TOTAL
COUR SUPÉRIEURE (PERCEPTEUR DES PENSIONS ALIMENT.) SJ-005													
1. DEMANDES ADRESSÉES AU PERCEPTEUR	151	751	870	567	582	599	327	485	440	415	443	372	6,602
1.1 Par le créancier pour exécution locale													1,510
1.2 Par le créancier pour expédition à l'extérieur	144	235	250	170	124	98	66	84	107	82	90	60	8,089
1.3 Par un percepteur extérieur pour exécution locale	803	814	1041	223	110	701	403	578	615	526	534	429	1,487
	52	163	177	256	128	108	76	93	175	111	91	57	
2. DEMANDES DU MINISTÈRE DES AFFAIRES SOCIALES													
2.1 Adressées au percepteur local pour exécution locale	-	1	35	5	-	1	3	2	-	4	130	171	352
2.2 Adressées au percepteur local pour expédition à l'extérieur	-	3	7	-	-	-	-	-	-	2	1	2	15
2.3 Provenant d'un percepteur extérieur pour exécution locale	-	-	12	-	-	1	-	1	-	-	5	4	23
3. REQUÊTES AUX FINS D'OBTENIR DES INFORMATIONS	7	18	51	90	220	21	19	24	19	18	26	13	526
4. BREFS DE SAISIE EMIS	244	432	502	466	499	568	696	379	522	411	387	312	5,418
4.1 Saisies-arrêts de traitements, salaires ou gages (art. 641 C.P.C.)	156	253	231	221	233	260	357	192	257	247	200	181	2,788
4.2 Autres saisies-arrêts (art. 625 C.P.C.)	29	54	74	54	49	70	86	43	55	61	72	62	709
4.3 Saisies mobilières (art. 680 C.P.C.)	56	114	188	180	206	224	246	138	198	97	110	64	1,821
4.4 Saisies immobilières (art. 660 C.P.C.)	3	11	9	11	11	14	7	6	12	6	5	5	100
5. MODE DE SIGNIFICATION													
5.1 Huissier	161	282	330	282	240	401	726	325	408	338	389	277	4,209
5.2 Courrier	212	362	353	415	358	305	29	223	274	262	276	238	3,303
5.3 Journaux	-	-	1	-	-	2	-	-	3	-	-	-	6

Arrêté de: **TOTAL DES RÉGIONS**

Préparé par:

Année:

COUR SUPERIEURE (PERCEPTEUR DES PENSIONS ALIMENT.) SO-005	JANV.	FEV.	MARS	AVRIL	MAI	JUIN	JUILL.	AOUT	SEPT.	OCT.	NOV.	DEC.	TOTAL
6. BREFS EFFICACES	25	85	137	121	122	174	95	134	176	156	145	96	1,466
7. OPPOSITIONS	7	70	122	109	113	112	211	192	175	152	116	88	1,467
8. CONTESTATIONS D'OPPOSITIONS	-	22	69	59	69	51	104	119	107	119	112	109	940
9. RECHERCHES ADRESSEES AU SERVICE DES RECLAMATIONS													
9.1 Demandes	21	91	97	85	227	84	128	91	134	80	60	42	1,140
9.2 Réponses positives	-	-	-	6	26	9	53	95	33	141	102	43	508
9.3 Réponses négatives	-	-	1	5	26	13	28	78	17	70	56	14	308
10. PENSIONS DISTRIBUEES (1)	1421	13858	23036	54538	53685	116144	86985	94576	97470	68695	89455	94949	794,818.23

(1) Moins région 06

ONTARIO

JUVENILE COURT (FAMILY DIVISION)									
ACTIVITY SUMMARY									
C.A.A. <--J.D.A.-->		<EDUCATION-->		FLR & C.C.C.		RJA DATE		REPORTING PERIOD	
PER	CHG	PER	CHG	PER	CHG	15-11-32	15-11-32	C4 31	C3 32
2743	292	175	7467	480	315	9	769	Apr 1/81 to March 31/82	
OPENING BALANCE									
TOTAL MATTERS RECEIVED									
19946	31522	1121	43232	3004	1231	71	1603	includes new applications as well as notices of default	
APPLICATION/INFORMATION	19929		19920	2926	1224	66	1603		
WARRANTS EXECUTED	17	530	59	656	78	5			
CHARGES/ENFORCEMENT	30392	1082	22796					includes notices of default requiring court appearance	
TOTAL MATTERS DISPOSED									
19973	20205	339	915	41990	3034	1023	50	1703	includes support orders from other court levels
ORDERS/CHARGES	15575	14227	24132	545	661	13447	999	36	1601
PROVISIONAL ORDERS MADE				241			312		
PROVISIONAL ORDERS CONF				106			130		
ENFORCEMENT ORDERS				106			106		
REVIEW/VARIATION				1749					
OTHER ORDERS									
DISMISSED	196	731	1209	18	27	6185	502	13	731
WITHDRAWN	1036	2304	5732	111	157	7035	1326	10	83
TRANSFER OUT	55	163	392	3	3	320	56	2	
WARRANTS ORDERED	30	590	1099	60	67	1475	151	11	
*ADJOURNMENTS									
8592	3270	34674	137	1346	30531	2981	446	13	731
*MOTIONS	1045				4980		8		138
*REPRESENTED/CONTESTED	3309				14921				193
*INTERIM/TEMPORARY ORDER	3433				2513				
*ASSESSMENT ORDERS	114								
CLOSING BALANCE									
2715	3200	331	8759	450	513	30	656	number of ledger cards (active) regarding maintenance	
DISPOSITION ASING									
C.A.A JUVEN <FAM>					CURRENT ACC				
UNDER 31	12543	16290	15864		TOTAL ASSIGN ENFOR				
31 - 60	3527	7224	15926		OPENING BAL	40262	10314	25426	
61 - 90	1423	3742	6005		OPENED	12182	5010	6575	
91 - 120	714	2227	2300		CASE SCHEDULE (WKS)				
OVER 120	1426	4040	4527		C.A.A JUVEN <FAM>				
					2				
					3				
					4				
					CLOSING BAL	44130	10332	23751	
REPORTS									
PRE-SENTENCE/SOCIAL HIST	1576	73			MAINTEN COLLECTED	5 TO 50			
PSYCHOLOGICAL/PSYCHIATRIC	1144	143			2513	14041837	6370.550		
ANALYSIS OF ORDERS MADE UNDER CWA JVA AND EDUCATION ACT									
C.A.A. (PERSONS)	BOYS	GIRLS	ADULT	J.D.A.	BOYS	GIRLS	ADULT	PERSONS	CHARGES
SUPERVISION	1737	1759		PROBATION	4729	730	36	7688	948
SOCIETY WARDSHIP	2551	2221		CHILDRENS AID	304	86	86	478	106
CROWN WARDSHIP	1021	871		TRAINING SCHOOL	469	74	74	1388	98
ADOPTION ORDERS	2175	1908		OTHER ORDERS	8054	1661	64	11281	2053
OTHER ORDERS	2202	2002	128	TOTAL JVA ORDERS	13776	2551	100	20835	3205
TOTAL CWA ORDERS	9696	9761	128						
*TEMPORARY ORDERS									
4322	4101			EDUCATION ACT	BOYS	GIRLS	ADULT	BOYS	GIRLS
*ASSESSMENT ORDERS	73	41		PROBATION	84	82	2	86	83
				CHILDRENS AID	19	21		20	21
				TRAINING SCHOOL	10	7		12	7
				OTHER ORDERS	195	200	26	201	202
				TOTAL EDUC ORDERS	308	310	28	319	313
*INDICATES THESE LINES NOT INCLUDED IN TOTAL MATTERS DISPOSED									

maintenence dollars which go to the Treasurer of Ontario and Municipal Welfare

number of ledger cards (active) regarding maintenance

total maintenance dollars collected

MANITOBA

MINNEAPOLIS EXPERIMENTAL PROJECT
 SECURITY MAINTENANCE ORDER # 1000000000

STATISTICS BY REGIONAL OFFICE

DATE: 92 SEP 30
 CURRENT MONTH
 PREVIOUS MONTHS
 YEAR-TO-DATE TOTAL
 ARREARS TOTAL
 YTD. + ARR. TOTAL

MAINTENANCE PAYMENTS TO PAYEE

MINNEAPOLIS REGION	\$45,300.00CR	\$7,622.50CR	\$53,003.10CR	137,672.62	190,675.72
WESTMAN REGION	\$5,875.00CR	\$425.00CR	\$6,300.00CR	\$65,665.00	\$71,965.00
EASTMAN REGION	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
CENTRAL REGION	\$2,320.00CR	\$290.00CR	\$2,610.00CR	\$24,940.00	\$27,550.00
INTERLAKE REGION	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
PARKLANDS REGION	\$40.00CR	\$0.00	\$40.00CR	\$40.00	\$80.00
NORMAN REGION	\$2,250.00CR	\$300.00CR	\$2,550.00CR	\$1,200.00CR	\$1,350.00
THOMPSON REGION	\$901.00CR	\$0.00	\$901.00CR	\$375.00	\$1,176.00

PAYMENTS TO MINISTER OF FINANCE

MINNEAPOLIS REGION	234,172.50CR	\$31,915.00CR	266,087.50CR	609,747.83	875,835.41
WESTMAN REGION	\$40,548.00CR	\$6,290.00CR	\$46,838.00CR	190,740.72	237,579.72
EASTMAN REGION	\$9,977.50CR	\$450.00CR	\$10,427.50CR	\$27,337.50	\$38,165.00
CENTRAL REGION	\$7,090.50CR	\$1,330.00CR	\$8,420.50CR	\$28,785.30	\$37,205.90
INTERLAKE REGION	\$15,237.79CR	\$2,105.00CR	\$17,342.79CR	\$73,140.00	\$90,532.79
PARKLANDS REGION	\$14,429.00CR	\$2,075.00CR	\$16,504.00CR	106,380.00	122,884.00
NORMAN REGION	\$4,960.00CR	\$3,670.00CR	\$8,630.00CR	\$60,380.00	\$69,010.00
THOMPSON REGION	\$11,495.34CR	\$1,170.55CR	\$12,665.89CR	115,492.22	128,068.11
TOTALS	394,537.31CR	\$58,043.05CR	452,580.36CR	439,496.19	892,076.55

ADJUDICATED CASES - ORDER CASELOAD MOVEMENT STATISTICS BY TYPE OF ORDER

PAGE 31

DATE 32 SEP 30

	R.E.A.D. R.E.A.D.		REG.		TOTAL	
	IN	OUT	CASES	CASES	CASES	CASES
DECREE JUDG	169	536	2017	2322	304	
MAINTENANCE ORDERS	145	417	2263	2325	434	
OVER ORDERS		2	12	14	9	
PROBATION ORDERS	6	6	137	149	23	
CHILD WELFARE ACT ORDERS	2	2	13	15	42	
OTHER ORDERS	323	1066	257	6088	812	

SASKATCHEWAN



Saskatchewan
Attorney General

City Hall
2476 Victoria Avenue
Regina, Canada
S4P 3V7

November 15, 1982.

3858 G

Ms. Gina Alderson,
c/o Department of Justice,
Ottawa, Ontario.
K1A 0H8

Dear Ms. Alderson:

Re: Federal/Provincial Committee on Maintenance
and Custody Order Enforcement - Subcommittee
on Cataloguing of Information.

Unfortunately Saskatchewan does not maintain statistics separate from the various and scattered court files on the above matters, therefore, the following material is offered in the hope that by reference to this smattering of figures one can draw some general inferences.

Actions Commenced by Originating Motion:

<u>Unified Family Court in Saskatoon</u>	1979	1980	1981
Divorce Act	658	795	734
Married Persons Property Act and Matrimonial Property Act	143	236	250
Deserted Wives' and Children's Maintenance Act	129	135	132
Infants Act	126	200	229
Children of Unmarried Parents Act	21	33	34
Others (including Extra-Provincial Custody Order Enforcement Act and applications under s. 11(2) and 15 of the Divorce Act)	30	78	115
	1,107	1,477	1,494

Queen's Bench - Regina

Divorce Act	589	611	622
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I estimate that approximately 50% of the cases under this legislation come before the courts in either Saskatoon or Regina. Additionally, as Regina and Saskatoon have comparable populations all other statistics gathered for Saskatoon can probably be assumed to be similar for Regina. However, I believe the Unified Court concept with the added feature of counselling services may lead to the initiation of more cases in that jurisdiction.

Additionally, I think one could assume that at least 50 - 60 % of the Divorce matters involve children and questions of maintenance.

The Deserted Wives and Children of Unmarried Parents actions involve maintenance, whereas the Infants Act applications related to custody and, perhaps, concurrently to maintenance.

The Department of the Attorney General appears for enforcement hearings in R.E.M.O. matters and our solicitors estimate that between 190 - 200 confirmation hearings or enforcement hearings may be scheduled each year divided between Regina and Saskatoon. In the rest of the Province, we hire Agents to represent the Attorney General. Presently, maintenance matters under R.E.M.O. are scheduled at least once a month in each major centre with an average of 8 cases on the list.

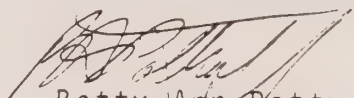
The Department of the Attorney General opened 80 files under R.E.M.O. (out-going and in-coming files) in the first 8 months of 1981 and opened 102 files in the first 10 months of 1982.

One study by the Department of Social Services which is a year or two old estimates that approximately 1/3 of all attempts in Saskatchewan to obtain maintenance are abandoned or fail because the applicant is unable to trace the defaulting spouse.

As we have no automatic enforcement system for maintenance enforcement at this time and as the court orders do not generally require the payments to be made to the courts, we have no available statistics on the level of default on maintenance orders in Saskatchewan.

I trust this information may be of some help to you.

Yours truly,



Betty Ann Pottruff,
Co-ordinator, Legal
Services for Social Services.

BRITISH COLUMBIA

AUTOMATIC ENFORCEMENT OF MAINTENANCE ORDERS

	Region 1 Number of Payments Received			Region 5 Number of Payments Received		
	<u>Received</u>	<u>Z Rec'd On File</u>	<u>On File</u>	<u>Received</u>	<u>Z Rec'd On File</u>	<u>On File</u>
1978						
August	1,119	N/A	N/A	788	N/A	N/A
1979						
January	1,208	80	1,519	880	67	1,307
1980						
January	1,475	78	1,885	945	70	1,351
1981						
January	1,494	79	1,898	995	66	1,505
February	1,473	75	1,966	943	63	1,502
March	1,585	81	1,944	1,055	67	1,563
April	1,416	79	1,800	1,026	67	1,490
May	1,464	77	1,892	981	64	1,513
June	1,438	80	1,778	1,094	73	1,505
July	922	63	1,467	618	42	1,482
August	1,252	75	1,668	982	61	1,618
September	1,292	71	1,820	1,006	62	1,636
October	1,369	75	1,814	1,105	65	1,704
November	1,371	76	1,807	899	58	1,563
December	1,446	80	1,804	987	62	1,591
1982						
January	1,343	73	1,845	869	56	1,557
February	1,371	73	1,840	836	54	1,563
March	1,601	85	1,891	1,168	65	1,795
April	1,387	80	1,723	929	57	1,643
May	1,318	77	1,715	855	54	1,580
June	1,323	75	1,774	915	56	1,642
July	1,266	74	1,703	877	54	1,636
August	1,251	74	1,683	780	48	1,616
September	1,199	72	1,656	816	49	1,667
October	1,273	74	1,716	834	50	1,674

N/A - Not Available

APPENDIX 2
LIST OF INTERVIEWS

1. Committee Member, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada, Newfoundland.
2. Official, Department of Justice, Newfoundland.
3. Court Administrator, Unified Family Court, St. John's, Newfoundland.
4. Deputy Registrar, Supreme Court, Newfoundland.
5. Associate Chief Judge, Provincial Court, Newfoundland.
6. Committee Member, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada, Prince Edward Island.
7. Family Court Registrar, Supreme Court, Prince Edward Island.
8. Member, Statistical Liaison Officers Committee, Prince Edward Island.
9. Committee Member, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada, Nova Scotia.
10. Supervisor, Special Protection Services, Department of Social Services, Nova Scotia.
11. Committee Member, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada, New Brunswick.
12. Research Assistant, Research and Planning Division, Department of Justice, New Brunswick.
13. Court Administrator, Court of Queen's Bench, New Brunswick.
14. Registrar, Court of Queen's Bench, New Brunswick.
15. Committee member, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada, Quebec.
16. Responsable des systèmes de gestion, Direction générale des services judiciaires, Gouvernement du Québec.
17. Committee member, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada, Ontario.

18. Manager, Information Services, Ministry of the Attorney General, Ontario.
19. Committee member, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada, Manitoba.
20. Maintenance Enforcement Officer, Family Court, Manitoba.
21. Director, Marriage Conciliation Service, Department of Community Services and Corrections, Manitoba.
22. Committee member, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada, Saskatchewan.
23. Committee member, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada, British Columbia.
24. Research and Planning Officer, Ministry of the Attorney-General, British Columbia.
25. Committee member, Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada, Canada.
26. Legal Policy Analyst, Status of Women Canada.
27. Training and Liaison Officer, Canadian Center for Justice Statistics, Statistics Canada.

APPENDIX E

CENTRAL REGISTRY

Central Registry

I Introduction

The federal representatives of the Sub-Committee on Information agreed to explore the recommendation to create a central registry. Gina Alderson considered this matter and the following is based on her work. A summary of this information was presented to the Federal-Provincial Committee on Enforcement of Maintenance and custody orders, at its meeting in Toronto in January 1983.

Representatives of the Federal-Provincial Committee, and other contacts referred by them, were interviewed to ascertain the objectives of a central registry. Whether these objectives could be met by the creation of a central registry was then considered.

II Background

A central registry, to act as a repository of all maintenance and custody orders, much like the registry of divorce decrees, was suggested as a means of improving the enforcement of support orders. It was mentioned by the federal government's 1979 National Plan of Action on the Status of Women: Towards Equality For Women and in the Manitoba government's "Position Paper on Family Law and the Constitution" (1980).

The concept of a central registry, described in Manitoba's paper, entailed a broader function than a repository of orders and was essentially intended to provide a national network of registries in which all support orders would be registered, thereby having immediate legal effect and becoming enforceable throughout Canada without having to be re-registered in each new jurisdiction. The registry would provide a centralized system for monitoring and enforcing such orders.

The Federal-Provincial Committee, in its interim report of October 13, 1981, indicated that the Committee did not think that certain measures, such as a national enforcement scheme, could be readily implemented. The Committee, however, retained the recommendation that a central registry be created, in order to serve as a check on the status of orders, and to use the information collected to research precedents and to promote consistency in maintenance and custody awards by establishing appropriate or common criteria.

III Objectives

The following have been identified as possible objectives of a central registry:

(1) To determine the status of an order quickly

In the enforcement of an out-of-province order, it is necessary to determine quickly and accurately whether the original order has been varied.

(2) To provide guidelines for support orders

The amount of support awarded varies regionally, and guidelines based on a comparison of all orders would be useful in assisting to establish uniform standards for courts to use in awarding support.

Apart from regional differences in the level of support, other problems related to the level of support include the generally low level of support being awarded and the variation of an out-of-province order to reduce the amount awarded, allegedly without sufficient cause.

(3) To identify effective enforcement procedures and achieve uniformity in enforcement practises

As laws and procedures for enforcing support and custody orders vary among provinces, it would be useful to identify the more effective procedures and to encourage their uniform application across Canada.

(4) To establish a national enforcement system

Manitoba proposed in 1980 a centralized system of registration and enforcement for all support and custody orders. The following is an excerpt from the Manitoba position paper:

"To illustrate, under such a system a Central Registry would be established by the Federal Government, with a network of subsidiary registries in each province. Once an order is obtained and registered in a subsidiary registry, it would automatically be registered in the Central Registry, and would have immediate legal effect throughout Canada without the necessity of further registration. Presently, there exists a Central Registry for Divorce Orders. Manitoba's proposal would extend this concept to include the

registration of all orders of custody and maintenance and, more importantly, would provide a centralized system for monitoring and enforcing such orders. The proposed federal system of enforcement would establish uniform standards, procedures and remedies applicable throughout the country.

An integral part of the centralized registry would be the establishment of a federal-provincial information bank to facilitate the prompt and efficient tracing of defaulting spouses and abducted children."

IV Whether a central registry could meet these objectives

(1) Determining the status of an order:

A central repository in which all orders must, by law, be registered could provide quick access to information regarding the status of an order, that is, whether an order has been varied. Delays caused by parties having to locate this information would be reduced, especially in the enforcement of an out-of-province order where one party to the order might not be present before the court to provide such information or where it is necessary to verify information.

While the usefulness of such a service is apparent, the various costs presently created by the delays experienced in determining the status of an order, including time and money, have not been documented; therefore, whether the cost effectiveness would be outweighed by the convenience remains to be answered.

(2) Establishing guidelines for support

The repository function of a central registry would have to be expanded to include a more sophisticated data collection and data analysis function in order to achieve this objective. Even then, it is uncertain whether such guidelines would be applied uniformly.

In order to achieve a uniform basis on which to award support, the basis for selecting one criteria over another would have to be determined, therefore the various factors taken into account in making such orders must be considered. The factors indicating the basis on which each order is made, would have to be determined and compared to identify whether a common denominator of factors exists. As orders are made

under different legislation and at different levels of court, the registry would need to keep a record of orders made under similar legislation and level of court and examine the total number of defaults within this group. Additional data on external constraints such as regional disparities in income would also have to be obtained.

One problem would be the current lack of available statistics of the number of defaults of support orders, collected on a uniform basis from province to province or even within provinces. Any collection of statistics would depend, of course, on the commitment and resources available in each province to collect such data.

Even if common denominators used to award support could be identified, this would only assist in determining the average amount and not necessarily the desirable amount. Given that orders are generally considered to be low, the provinces would have to agree to increase the level of support being awarded. This might be difficult to achieve as some provinces have indicated that in their view, regional disparities in the level of awards is justified.

(3) Uniform Enforcement Practise

A pre-condition to determining the most effective procedure for enforcing maintenance and custody orders is being able to select one process over another. This requires an evaluation of enforcement mechanisms. In order to evaluate enforcement mechanisms, statistics on the total number of orders made under each type of enforcement legislation and the total number of defaulters within each group would have to be considered. Unless such statistics could be obtained, a data collection component would have to be included as a function of the central registry, before the central registry could identify which enforcement procedure or law is most desirable and recommend uniform application of such law and procedure. Again uniform application would require the cooperation of each province and territory.

Collection and analysis of data would have to be performed, which would require additional resources. On-going collection of data might not be necessary in order to identify the most desirable enforcement mechanism or to observe trends in enforcement. A short term collection of data might be sufficient and less costly.

As one reason for the present lack of effective enforcement measures is the lack of resources necessary to administer more comprehensive enforcement schemes, including collection procedures, additional resources would be required to implement desired enforcement measures where they do not exist.

(4) A national enforcement mechanism

As the Federal-Provincial Committee agreed not to pursue this concept of a central registry as it could not be readily implemented, it was not examined further at this time.

IV Other factors

Other considerations to be taken into account include the following:

i) Privacy - The systematic collection of personal information, other than information normally contained in court orders, to be accessed by unknown persons, raises concerns over the rights of the agency to collect and use this information, the accuracy of this information, and the individuals' right to verify its accuracy. Some have even questioned whether such collection may be unconstitutional.

ii) Use of a central registry - The question of who would have access to the central registry and on what basis would have to be determined. The location and control of a central registry would also have to be discussed.

iii) Costs - Costs have not been considered at this stage. The success of a central registry is dependent on federal-provincial co-operation as well as inter-provincial co-operation.

The administrative structure of a central registry would have to be determined. It would likely require computer facilities; therefore, factors such as the existence of compatible computer equipment or installation costs of new equipment would affect start-up costs. In a province such as Manitoba, which has a computerized enforcement system in place, start-up costs would be less. In Newfoundland where, outside the Unified Family court, there is no computerized enforcement mechanism, costs could be considerable.

At the federal level, if the present divorce registry could be expanded to incorporate a registry of support and custody orders, the cost would be reduced.

iv) Duplication of services - The Canadian Centre for Justice Statistics is currently negotiating with the provinces on the collection of statistics in a number of areas, including maintenance. The duplication of services provided by another branch should be avoided if possible. In addition, the request for a collection of statistics on maintenance and custody orders should, if possible, be co-ordinated with the requests of C.C.J.S. to avoid over-burdening the providers of such statistics.

V Conclusion

A central registry to act as a mere repository of maintenance and custody orders made ancillary to the Divorce Act and pursuant to provincial law would provide an easily accessible and reliable source of information to determine whether original orders have been varied. It would therefore facilitate enforcement by reducing the delays involved in obtaining the status of orders.

In order to provide guidelines for support orders, however, additional data would be required to establish such guidelines, and given the existing problems of low support orders and regional disparities, establishing guidelines would be of limited use, unless provinces agreed to use such guidelines and, if necessary, to alter the level of awards. Therefore an identification of common denominators, in and of itself, would not achieve the desired results.

The objective to identify effective enforcement procedures and to encourage uniformity in enforcement practises would also be difficult to achieve. The complementary statistics necessary to identify the desirable enforcement mechanisms do not exist; nor, in many provinces, is their collection foreseeable in the near future. A central registry devoid of these complementary statistics would not be able to achieve this objective.

Ascertaining status seems to be the only objective that a central registry could realistically achieve at this point; however, the cost factor would have to be determined. The two other objectives would require further investigation.

The Federal-Provincial Committee, at its meeting in January, 1983, agreed that to have a means of ascertaining the status of orders would be useful and that a central registry should be further explored in this context.

APPENDIX "F"

PASSPORT REGULATIONS

Registration
SI/81-86 24 June, 1981

Enregistrement
TR/81-86 24 juin 1981

OTHER THAN STATUTORY AUTHORITY

AUTORITÉ AUTRE QUE STATUTAIRE

Canadian Passport Order

Décret sur les passeports canadiens

P.C. 1981-1472 4 June, 1981

C.P. 1981-1472 4 juin 1981

His Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs, is pleased hereby to revoke the Canadian Passport Regulations, C.R.C., c. 641, and to make the annexed Order respecting Canadian passports in substitution therefor.

Sur avis conforme du secrétaire d'État aux Affaires extérieures, il plaît à Son Excellence le Gouverneur général en conseil d'abroger le Règlement des passeports canadiens, C.R.C., c. 641 et de prendre en remplacement le Décret concernant les passeports canadiens, ci-après.

ORDER RESPECTING CANADIAN PASSPORTS

DÉCRET CONCERNANT LES PASSEPORTS CANADIENS

Short Title

Titre abrégé

1. This Order may be cited as the *Canadian Passport Order*.

1. Le présent décret peut être cité sous le titre: *Décret sur les passeports canadiens*.

Interpretation

Définitions

2. In this Order,

2. Dans le présent décret,

“Act” means the *Citizenship Act*; (*Loi*)

«*ancienne Loi*» désigne la *Loi sur la citoyenneté canadienne*; (*former Act*)

“applicant” means a person who has attained sixteen years of age who applies for a passport or a person who has attained sixteen years of age who applies for the inclusion of the name of a child in that person's passport; (*requérant*)

«*Bureau des passeports*» désigne le service du ministère des Affaires extérieures, où qu'il se trouve, que le Ministre a chargé de la délivrance, de la révocation, de la retenue, de la récupération et de l'utilisation des passeports; (*Passport Office*)

“former Act” means the *Canadian Citizenship Act*; (*ancienne Loi*)

«*Loi*» désigne la *Loi sur la citoyenneté*; (*Act*)

“Minister” means the Secretary of State for External Affairs; (*Ministre*)

«*Ministre*» désigne le secrétaire d'État aux Affaires extérieures; (*Minister*)

“passport” means an official Canadian document that shows the identity and nationality of a person for the purpose of facilitating travel by that person outside Canada; (*passport*)

«*passeport*» désigne un document officiel canadien qui établit l'identité et la nationalité d'une personne afin de faciliter les déplacements de cette personne hors du Canada; (*passport*)

“Passport Office” means a section of the Department of External Affairs, wherever located, that has been charged by the Minister with the issuing, revoking, withholding, recovery and use of passports. (*Bureau des passeports*)

«*requérant*» désigne une personne âgée d'au moins seize ans qui demande un passeport ou qui demande l'inscription du nom d'un enfant dans son passeport. (*applicant*)

Issuance of Passports

Délivrance des passeports

3. Every passport

3. Chaque passeport

(a) shall be in a form prescribed by the Minister;

a) doit être émis selon la forme prescrite par le Ministre;

(b) shall be issued in the name of the Minister on behalf of Her Majesty in right of Canada;

b) doit être délivré au nom du Ministre agissant au nom de Sa Majesté du chef du Canada;

(c) shall at all times remain the property of Her Majesty in right of Canada;

c) demeure en tout temps la propriété de Sa Majesté du chef du Canada;

(d) shall be issued on the condition that the bearer will return it to the Passport Office forthwith when requested to do so by that office;

d) est délivré à condition que le titulaire le retourne immédiatement au Bureau des passeports à la demande de ce Bureau;

(e) shall be signed by the person to whom it is issued; and

e) doit être signé par la personne à laquelle il est délivré; et

(f) shall, unless it is sooner revoked, expire not later than five years from the date on which it is issued.

4. (1) Subject to this Order, any person who is a Canadian citizen under the Act may be issued a passport.

(2) No passport shall be issued to a person who is not a Canadian citizen under the Act.

5. No passport shall be issued to any person and no name of a child shall be included in the passport of any person unless an application for a passport is made by that person to the Passport Office in a form prescribed by the Minister.

6. An application for a passport by or in respect of a person who was

(a) born in Canada shall be accompanied by

(i) a certificate of Canadian citizenship granted or issued to the person under the Act or the former Act,

(ii) a certificate of naturalization granted to the person under any Act that was in force in Canada at any time before the 1st day of January, 1947,

(iii) a certificate of birth issued to the person by a province or by a person authorized by a province to issue such certificates, or

(iv) a certificate that indicates the date and place of the birth of the person in Quebec, duly issued by a person authorized under the law of Quebec to issue such certificates; or

(b) born outside Canada shall be accompanied by

(i) a certificate of Canadian citizenship granted or issued to the person under the Act or the former Act,

(ii) a certificate of naturalization granted to the person under any Act that was in force in Canada at any time before the 1st day of January, 1947,

(iii) a certificate of registration of birth abroad issued to the person by the Registrar of Canadian Citizenship pursuant to the former Act, or

(iv) a certificate of retention of Canadian citizenship issued to the person by the Registrar of Canadian Citizenship pursuant to a declaration of retention of Canadian citizenship made by the person pursuant to regulations made under the former Act.

7. (1) Subject to subsections (2) to (4), where a child has not attained sixteen years of age,

(a) the child may be issued a passport if the applicant therefor is

(i) the parent of the child,

(ii) where the parents of the child are divorced or separated, the custodial parent, or

(iii) the legal guardian of the child; or

(b) the name of the child may be included in the passport of the applicant if the applicant is a person referred to in subparagraph (a)(i) or (ii).

f) expire au plus tard cinq ans après la date de délivrance, sauf en cas de révocation antérieure.

4. (1) Sous réserve du présent décret, un passeport peut être délivré à toute personne qui est citoyen canadien en vertu de la Loi.

(2) Aucun passeport n'est délivré à une personne qui n'est pas citoyen canadien en vertu de la Loi.

5. Un passeport n'est délivré à une personne et le nom d'un enfant n'est ajouté dans le passeport de cette personne que si une demande de passeport est présentée par cette personne au Bureau des passeports selon la forme prescrite par le Ministre.

6. Une demande de passeport présentée par une personne ou à l'égard d'une personne

a) née au Canada, doit être accompagnée

(i) d'un certificat de citoyenneté canadienne accordé ou délivré à la personne en vertu de la Loi ou de l'ancienne Loi,

(ii) d'un certificat de naturalisation délivré à la personne en vertu d'une loi qui était en vigueur au Canada à une date quelconque avant le 1^{er} janvier 1947,

(iii) d'un acte de naissance délivré à la personne par une province ou par une personne autorisée par une province à délivrer de tels actes, ou

(iv) d'un certificat établissant la date et le lieu de naissance de la personne au Québec et dûment délivré par une personne autorisée en vertu de la loi du Québec à délivrer de tels certificats; ou

b) née en dehors du Canada, doit être accompagnée

(i) d'un certificat de citoyenneté canadienne accordé ou délivré à la personne en vertu de la Loi ou de l'ancienne Loi,

(ii) d'un certificat de naturalisation délivré à la personne en vertu d'une loi qui était en vigueur au Canada à une date quelconque avant le 1^{er} janvier 1947,

(iii) d'un certificat d'enregistrement de naissance à l'étranger délivré à la personne par le Registraire de la citoyenneté canadienne conformément à l'ancienne Loi, ou

(iv) d'un certificat de rétention de la citoyenneté canadienne délivré à la personne par le Registraire de la citoyenneté canadienne en vertu d'une déclaration de rétention de la citoyenneté canadienne faite par la personne conformément aux règlements établis en vertu de l'ancienne Loi.

7. (1) Sous réserve des paragraphes (2) à (4), si l'enfant a moins de seize ans,

a) il peut se voir délivrer un passeport si le requérant est

(i) l'un de ses parents,

(ii) le parent qui a la garde de l'enfant, lorsque les parents sont divorcés ou séparés, ou

(iii) le tuteur de l'enfant; ou

b) le nom de l'enfant peut être ajouté dans le passeport du requérant, si le requérant est une personne visée au sous-alinéa a)(i) ou (ii).

(2) Where the parents of a child are divorced or separated and there is in existence

(a) a court order made by a court in Canada of competent jurisdiction, or

(b) a separation agreement,

the terms of which grant the non-custodial parent specific right of access to the child, the child shall not be issued a passport or the child's name shall not be included in the passport of the custodial parent unless the application therefor is accompanied by evidence that the issue of a passport to the child or the inclusion of the child's name in the passport of the custodial parent is not contrary to the terms of the order or separation agreement.

(3) Where there is a court order made by a court in Canada of competent jurisdiction in respect of a child who has not attained sixteen years of age the terms of which restricts the movement of that child to a judicial district specified in the order, the child shall not be issued a passport and the child's name shall not be included in the passport of the applicant unless the court order is revoked or is varied to permit the child to travel outside Canada.

(4) Where an applicant applies for the issue of a passport to a child who has not attained sixteen years of age or to have the name of a child who has not attained sixteen years of age included in the applicant's passport and the applicant fails to provide the Passport Office with

(a) the information and material required in the application for a passport, or

(b) the further information and material requested pursuant to section 8,

no passport shall be issued to that child and the name of that child shall not be included in the applicant's passport.

8. (1) In addition to the information and material that an applicant is required to provide in the application for a passport, the Passport Office may request an applicant to provide further information respecting any matter relating to the issue of the passport.

(2) The further information referred to in subsection (1) and the circumstances in which such information may be requested includes the information and circumstances set out in the schedule.

Refusal of Passports and Revocation

9. The Passport Office may refuse to issue a passport to an applicant who

(a) fails to provide the Passport Office with a duly completed application for a passport or with the information and material that is required or requested

(i) in the application for a passport, or

(ii) pursuant to section 8;

(b) stands charged in Canada with the commission of an indictable offence;

(c) stands charged outside Canada with the commission of any offence that would, if committed in Canada, constitute an indictable offence;

(2) Si les parents d'un enfant sont divorcés ou séparés et qu'il existe

a) une ordonnance rendue par un tribunal canadien compétent, ou

b) une entente de séparation

aux termes de laquelle le parent qui n'a pas la garde de l'enfant jouit du droit exprès de visite de l'enfant, aucun passeport n'est délivré à l'enfant et son nom ne peut être ajouté dans le passeport du parent qui a la garde de l'enfant, à moins que la demande ne soit accompagnée d'une preuve établissant que la délivrance d'un passeport à l'enfant ou l'inscription du nom de ce dernier dans le passeport du parent qui a la garde de l'enfant, ne contrevient pas aux dispositions de l'ordonnance ou de l'entente de séparation.

(3) Si une ordonnance a été rendue à l'égard d'un enfant de moins de seize ans par un tribunal canadien compétent ayant pour effet de limiter les déplacements de l'enfant à un district judiciaire précisé dans l'ordonnance, aucun passeport n'est délivré à l'enfant et le nom de ce dernier n'est pas ajouté dans le passeport d'un requérant à moins que l'ordonnance ne soit révoquée ou révisée de façon à permettre à l'enfant de voyager hors du Canada.

(4) Si un requérant présente une demande de passeport à l'égard d'un enfant de moins de seize ans ou une demande d'inscription du nom de l'enfant dans son passeport et que le requérant ne fournit pas au Bureau des passeports

a) les renseignements et les documents exigés dans la demande de passeport, ou

b) les renseignements et documents supplémentaires demandés selon l'article 8,

aucun passeport n'est émis au nom de l'enfant et le nom de ce dernier n'est pas ajouté dans le passeport du requérant.

8. (1) En plus des renseignements et des documents que le requérant doit fournir en présentant une demande de passeport, le Bureau des passeports peut demander à ce requérant de fournir des renseignements supplémentaires à l'égard de toute question se rapportant à la délivrance du passeport.

(2) Les renseignements supplémentaires visés au paragraphe (1) et les circonstances qui justifient la demande de tels renseignements comprennent ceux mentionnés à l'annexe.

Refus de délivrance et révocation

9. Le Bureau des passeports peut refuser de délivrer un passeport à un requérant qui

a) ne lui présente pas une demande de passeport dûment remplie ou ne lui fournit pas les renseignements et les documents exigés ou demandés

(i) dans la demande de passeport, ou

(ii) selon l'article 8;

b) est accusé au Canada d'un acte criminel;

c) est accusé dans un pays étranger d'avoir commis une infraction qui constituerait un acte criminel si elle était commise au Canada;

(d) is serving a term of imprisonment or is forbidden to leave Canada by

- (i) the terms and conditions of any parole or mandatory supervision imposed under or by virtue of the *Parole Act*,
- (ii) the conditions of a probation order made under the *Criminal Code*, or
- (iii) the conditions of the grant of a temporary absence without escort from a prison or penitentiary;

(e) has been convicted of an offence under section 58 of the *Criminal Code*;

(f) is indebted to the Crown for expenses related to repatriation to Canada or for other consular financial assistance provided abroad at his request by the Government of Canada; or

(g) has been issued a passport that has not expired and has not been revoked or whose name is included in such a passport.

10. The Passport Office may revoke the passport of a person on any ground on which it may refuse to issue a passport to that person if he were an applicant and may revoke the passport of a person who

- (a) being outside Canada, stands charged in a foreign country or state with the commission of any offence that would constitute an indictable offence if committed in Canada;
- (b) uses the passport to assist him in committing an indictable offence in Canada or any offence in a foreign country or state that would constitute an indictable offence if committed in Canada;
- (c) permits another person to use the passport;
- (d) has obtained the passport or the inclusion of the name of a child in the passport by means of false or misleading information; or
- (e) has ceased to be a Canadian citizen.

11. When a person has been advised by the Passport Office that a passport in his possession is required to be returned to the Passport Office, he shall forthwith return the passport to the nearest Passport Office.

SCHEDULE

ADDITIONAL INFORMATION

Name

1. Where an applicant applies for a passport in a name that is

- (a) other than the applicant's legal name,
- (b) different from the name set out in
 - (i) the applicant's birth certificate,
 - (ii) certificate of citizenship, or
 - (iii) any other document required in respect of a passport under this Order,

the applicant may be required to submit additional documents or affidavits in clarification thereof.

d) purge une peine d'emprisonnement ou est frappé de l'interdiction de quitter le Canada

- (i) selon les modalités découlant d'une libération conditionnelle ou d'une libération sous surveillance obligatoire imposée en vertu de la *Loi sur la libération conditionnelle de détenus*,
- (ii) selon les dispositions d'une ordonnance de probation établie en vertu du *Code criminel*, ou
- (iii) selon les conditions régissant une absence temporaire sans escorte d'une prison ou d'un pénitencier;

e) a été déclaré coupable d'un acte criminel selon l'article 58 du *Code criminel*;

f) est redevable envers la Couronne par suite des dépenses engagées en vue de son rapatriement au Canada ou d'une autre assistance financière consulaire qu'il a demandée et que le gouvernement du Canada lui a fournie à l'étranger; ou

g) détient un passeport ou dont le nom est inscrit dans un passeport qui n'est pas expiré et n'a pas été révoqué.

10. Le Bureau des passeports peut révoquer le passeport d'une personne pour toute raison qui justifierait le refus de délivrer un passeport à cette personne si elle présentait une demande, et peut révoquer le passeport d'une personne qui

- a) étant en dehors du Canada, est accusée dans un pays ou un État étranger d'avoir commis une infraction qui constituerait un acte criminel si elle était commise au Canada;
- b) utilise le passeport pour commettre un acte criminel au Canada, ou pour commettre, dans un pays ou État étranger, une infraction qui constituerait un acte criminel si elle était commise au Canada;
- c) permet à une autre personne de se servir du passeport;
- d) a obtenu le passeport ou a fait inscrire le nom d'un enfant dans ce passeport au moyen de renseignements faux ou trompeurs; ou
- e) n'est plus citoyen canadien.

11. Toute personne que le Bureau des passeports avise de lui retourner un passeport qu'elle a en sa possession doit retourner immédiatement ce passeport au Bureau des passeports le plus proche.

ANNEXE

RENSEIGNEMENTS SUPPLÉMENTAIRES

Nom

1. Si le requérant utilise dans sa demande de passeport un nom

- a) autre que son nom légal,
- b) différent du nom qui paraît
 - (i) sur son acte de naissance,
 - (ii) sur son certificat de citoyenneté, ou
 - (iii) sur tout autre document exigé en vertu du présent décret,

il peut être requis de fournir des documents supplémentaires ou des affidavits pour clarifier la situation.

Address

2. Where an applicant provides as an address a Canada Post Office Box number or a General Delivery address, the applicant may be required to provide an explanation for such address or to provide a permanent address.

Date of Birth

3. Where the date of birth of an applicant set out in an application for a passport differs from the date of birth in that applicant's birth certificate, further evidence of the date of birth of the applicant may be required.

Sex

4. (1) Where the sex indicated in an application for a passport is not the same as that set out in that applicant's birth certificate, the applicant may be requested to provide an explanation.

(2) Where an application for a passport indicates that a change of sex of the applicant has taken place, the applicant may be requested to submit a certificate from a medical practitioner to substantiate the statement.

Marital Status

5. Where an applicant's marital status as set out in that applicant's application is single and the applicant applies

(a) to have a child included in the applicant's passport, or

(b) for a passport for a child,

evidence may be required to establish that the applicant is the responsible parent of the child.

Loss of Citizenship

6. Where the information submitted in an application for a passport indicates that the applicant may have, at any time, ceased to be a Canadian citizen, information may be required from that applicant to establish that the applicant is a Canadian citizen.

Passports for Children

7. Where an applicant referred to in section 7 of this Order applies for the issue of a passport for a child referred to in that section or to have that child's name included in the applicant's passport, the applicant may be required to submit evidence, in the form of affidavits, statutory declarations or otherwise, to substantiate the applicant's eligibility to so apply.

Missing Canadian Passports

8. Where there is in existence a valid Canadian passport in respect of an applicant and that applicant is unable to produce it, the applicant may be required to provide a statement explaining the circumstances in respect of the missing passport together with such affidavits or statutory declarations as are necessary to establish that the passport is missing and the reasons therefor.

Adresse

2. Si le requérant fournit un numéro de case postale ou la poste restante comme adresse postale, il peut être requis de fournir une explication ou donner une adresse permanente.

Date de naissance

3. Si la date de naissance du requérant donnée dans la demande de passeport diffère de celle qui figure dans son acte de naissance, le requérant peut être requis de fournir d'autres preuves de sa date de naissance.

Sexe

4. (1) Si le sexe indiqué dans la demande de passeport ne correspond pas au sexe indiqué sur l'acte de naissance du requérant, ce dernier peut être requis de fournir une explication.

(2) Si la demande de passeport fait état d'un changement de sexe, le requérant peut être requis de fournir un certificat médical à l'appui de cette déclaration.

Situation de famille

5. Le requérant qui se dit célibataire et qui présente une demande en vue

a) d'ajouter le nom d'un enfant dans son passeport, ou

b) d'obtenir un passeport pour un enfant,

peut être appelé à prouver qu'il est le parent responsable de l'enfant.

Perte de citoyenneté

6. Si les renseignements fournis à l'appui de la demande de passeport indiquent que le requérant peut, à un moment quelconque, avoir perdu sa citoyenneté canadienne, celui-ci peut être requis de fournir d'autres renseignements établissant sa citoyenneté canadienne.

Passeports pour enfants

7. Si un requérant visé par l'article 7 du présent décret présente une demande de passeport pour un enfant visé par cet article ou en vue d'ajouter le nom de cet enfant dans son passeport, le requérant peut être appelé à fournir une preuve sous forme d'affidavits, de déclarations statutaires ou autres documents officiels, afin d'appuyer l'admissibilité du requérant à présenter une telle demande.

Passeports canadiens manquants

8. Si un passeport canadien valide a été délivré au requérant et que ce dernier ne peut produire ledit passeport, le requérant peut être requis de fournir une déclaration quant aux circonstances entourant la perte du passeport ainsi que les affidavits ou déclarations statutaires nécessaires, de façon à établir la perte du passeport et les raisons de cette perte.

Marriage

9. (1) Where a female applicant married an alien prior to January 1, 1947, additional information may be required to establish whether the applicant is a Canadian citizen.

(2) Where a female applicant who is married and in possession of a valid passport issued to her in her maiden name requests that her married name be added to the passport, the applicant may be required to produce her marriage certificate.

Delivery of Passports

10. (1) Where delivery of a passport is made at a Passport Office to an applicant, the applicant may be required to produce a document establishing the identity of the applicant.

(2) Where delivery of a passport is made at a Passport Office to the agent of an applicant, that agent may be required to produce a letter of consent from the applicant to accept delivery.

Applicants who have been Refused Passports

11. Where an applicant has previously applied for a passport and the issue of a passport to that applicant has been refused, information may be required from the applicant to establish that the applicant is eligible to be issued a passport.

Proof of Guardianship

12. Where the application for a passport is in respect of a child and the applicant is the legal guardian of the child, information may be required to establish proof of guardianship of that child.

EXPLANATORY NOTE

(This note is not part of the Order, but is intended only for information purposes.)

This order authorizes the issuance of Canadian passports.

Mariage

9. (1) Si la requérante a épousé un étranger avant le 1^{er} janvier 1947, il peut lui être nécessaire de fournir des renseignements supplémentaires afin de confirmer qu'elle est citoyenne canadienne.

(2) Si la requérante mariée est en possession d'un passeport valide émis à son nom de jeune fille et demande que son nom de femme mariée soit ajouté au passeport, elle peut être requise de produire son certificat de mariage.

Délivrance des passeports

10. (1) Lorsque le requérant prend possession d'un passeport dans un Bureau des passeports, il peut être appelé à produire un document établissant son identité.

(2) Si un représentant du requérant prend possession d'un passeport dans un Bureau des passeports, il peut être appelé à produire une lettre de consentement du requérant l'autorisant à prendre livraison du passeport.

Requérants auxquels on a refusé un passeport

11. Si le requérant a déjà présenté une demande de passeport et que celle-ci lui a été refusée, il peut être appelé à fournir des renseignements en vue d'établir son admissibilité à un passeport.

Preuve de la garde d'un enfant

12. Si le tuteur d'un enfant présente une demande de passeport à l'égard de l'enfant, il peut être requis de fournir des renseignements établissant la garde de cet enfant.

NOTE EXPLICATIVE

(La présente note ne fait pas partie du décret et n'est publiée qu'à titre d'information.)

Ce décret autorise la délivrance de passeports canadiens.

APPENDIX "G"

STATUS REPORT ON RECOMMENDATIONS ADDRESSED TO THE
ATTENTION OF PROVINCIAL AND FEDERAL GOVERNMENTS

BRITISH COLUMBIA

Recommendations for provincial action:

For brevity, The Family Relations Act, R.S.B.C. 1979, C. 121, is referred to below as "F.R.A."

1. Implementation of a computerized system for monitoring maintenance payments:

The introduction of a computerized system for monitoring maintenance payments is being actively considered.

2. Introduction of legislation requiring the release of information which would assist in the location of a proposed respondent or defaulting payor:

There is no present plan to introduce legislation requiring provincial agencies and individuals subject to provincial legislation to release such information.

3. Development of a computerized information bank:

A computerized information bank is not under consideration.

4. Automatic state initiated enforcement of maintenance payments:

Automatic state initiated enforcement is being actively considered.

5. Increased emphasis on enforcement procedure which would not involve court hearings.

There is no increased emphasis on enforcement procedures without court hearings. A variety of procedures exist; which procedure is used is at the election of the applicant for enforcement. Depending on decisions made under 1 and 4 above, this may change.

6. Introduction of legislation that would abolish the 1-year rule of enforcement:

See Section 65(2) F.R.A. concerning court discretion on warrants of execution to exceed the one year limit. In all cases, other than warrants of execution, the one year limit exists by authority of case law. No change in or by legislation is anticipated at present.

7. Introduction of legislation which would provide for the enforcement of maintenance payments contained in separation agreements:

Written agreements are enforceable where parties consent to filing of the agreement in court. See Section 74 F.R.A. There are no present plans to amend legislation where there is no consent.

8. Introduction of legislation providing for specific remedies to enforce arrears of maintenance:

B.C. has and uses the remedies set out in the recommendation save for:

(d)

(g)

(h)

(i) except for disposal of family assets. See section 77 F.R.A.

9. Adoption of the proposed Uniform Reciprocal Enforcement of Maintenance Orders Act:

There are no present plans to enact the provisions of the Uniform R.E.M.O. Act.

10. Introduction of uniform legislation providing for orders which would prohibit one spouse from molesting, annoying or harassing the other spouse or any child in the custody of that spouse:

B.C. does have legislation in this area: See Section 37, 79, and 81 of the F.R.A.

11. Introduction of legislation assigning maintenance payments to the provincial government where the recipient of maintenance is receiving social assistance:

B.C. does have legislation: See Section 61(5) F.R.A. (amended as of June 7, 1982).

12. Expansion of the role of counsel employed by the Provincial Crown in enforcement to include the enforcement of foreign custody orders:

It is contemplated that counsel will be provided in Hague Convention custody matters but not in enforcement

of custody orders made within Canada. Planning has not yet been completed.

13. Introduction of legislation providing for specific remedies to enforce custody orders:

B.C. has legislation in this area.

(A) To aid in the recovering of the child

(i) Posting of a security or bond for performance of an order (\$5,000.00). Family Relations Act rules. Rule 15(1).

(ii) Warrant for arrest - where it is feared that the abducting parent will flee the jurisdiction.

See Sections 37 and 81 of F.R.A. Note recent amendments to Criminal Code, sections 249 and 250.

(iii) Court order directing peace officers to locate and assist in the return of abducted children.

As to apprehension and returning child (but not location), see section 36, F.R.A. There are no present plans as to location of children.

(iv) Deposit of travel documents, i.e. passport.

This power exists. See section 37(c)(iii) F.R.A.

B. Penal Sanction

(i) Imprisonment for contempt.

Contempt - The power exists. See section 2(3) Provincial Court Act.

(ii) Fine - Unlawful interference with custody or access is an offence. See section 81(2), F.R.A. An offence is punishable by up to 6 months imprisonment, or a \$2,000 fine or both. See section 4, Offence Act.

14. Introduction of Uniform Custody Enforcement legislation which would implement the Hague Convention on the Civil Aspects of International Child Abduction and would extend the principles set out in this Convention to enforcement of custody orders within the Province and between Provinces:

Enabling legislation has been enacted, but it is not yet proclaimed. There are no present plans to extend the principles.

15. Appointment of specialists in family law to the provincially appointed judiciary:

There are no such plans known.

March 2, 1983

ALBERTA

Recommendation for Provincial Action:

1. Implementation of a computerized system for monitoring maintenance payments:

The Province of Alberta has no such system. This issue is under discussion between the Department of The Attorney General and the Department of Social Services and Community Health.

2. Introduction of legislation requiring public agencies and individuals to release the address, place of employment, or any other information in their possession which would assist in the location of a proposed respondent or defaulting payor:

Legislation with respect to this recommendation is not contemplated in the near future. The matter will require further discussion with the various government departments and agencies involved.

3. A computerized information bank to be maintained in conjunction with recommendations 1 and 2:

The Province of Alberta has no such system.

4. Automatic state initiated enforcement of maintenance payments:

In the Province of Alberta the Department of Social Services and Community Health initiates enforcement of maintenance payments to which the Crown is subrogated by virtue of social assistance payments. The Department of Social Services maintains their own records and initiates the procedure on that basis.

5. Increased emphasis on enforcement procedures which would not involve court hearings:

The Department of Social Services may adopt informal procedures to emphasize collection of maintenance where they are subrogated. In the Province of Alberta the judicial model of enforcement is utilized, if all other enforcement procedures are unsatisfactory.

6. Introduction of legislation that would abolish the 1 year rule of enforcement:

Case law does not seem to indicate a difficulty with the supposed one year rule and accordingly legislation is not contemplated.

7. Introduction of legislation which would provide for the enforcement of maintenance payments contained in separation agreements:

The area of enhancement of enforcement of maintenance is an area that is under discussion with the Department of Social Services. These types of issues will no doubt be addressed as part of our continuing re-examination of our family law statutes.

8. Introduction of legislation providing for specific remedies to enforce arrears of maintenance:

Under our Domestic Relations Act, the following remedies are applicable:

- 1) Any of the means provided for by part XXIV of the Criminal Code (Canada) for the enforcement of an Order by a Justice for the payment of a fine or penalty.
- 2) Payment Order of Arrears.
- 3) Attachment of salary, wages or other remuneration.
- 4) An Order permitting the applicant to file the Order with the Sheriff deeming it to be a writ of execution for the amount the payment is in arrears.

With respect to this, and notwithstanding any other Act, an order for maintenance filed under this aspect takes priority over any other writ of execution for an amount equal to the total maintenance payable for the latest three month period pursuant to the order.

- 5) Attachment of all debts, obligations and liabilities, other than wages and salary, from a named debtor payable to the clerk of the provincial court. This is an ex parte process to the court.
- 6) Registration of Order in Land Titles Office. This has the effect of binding the estate and interest of the person ordered to pay maintenance and alimony.

9. Enactment of a modified version of the proposed uniform Reciprocal Enforcement of Maintenance Orders Act which has been adopted by the Uniform Law Conference of Canada:

In 1980 New Brunswick adopted this legislation. We take note of the proposed amendment to section 7(7)(c). We are instituting process to bring this matter to our legislative counsel's attention.

10. Introduction of uniform legislation providing for Orders which would prohibit one spouse from molesting, annoying or harassing the other spouse or any child in custody of that spouse:

In Alberta, under our Domestic Relations Act, the provisions of Part 24 of the Criminal Code apply. The question of adoption of uniform legislation will be under future discussion.

11. Introduction of legislation assigning maintenance payments to the provincial government where the recipient of maintenance is receiving social assistance:

Alberta allows for this under the Social Development Act. A written assignment is not necessary and the Crown has the power to make an application with or without the consent of the social allowance recipient.

12. Expansion of the role of the provincial Crown Counsel in enforcement to include the enforcement of foreign custody orders:

The Department of the Attorney General has proposed that a designated counsel be established to advise and render assistance to parties in obtaining private legal counsel to pursue private civil remedies in the court. This matter is under discussion with the Department of Social Services and Community Health with respect to the Department of the Attorney General's proposal. We do not however, propose that Crown counsel represent the interests of a private individual with respect to custody enforcement. This issue is under discussion and will be addressed during our continuing discussion with the Department of Social Services and Community Health with respect to the Hague Convention and our responsibilities thereunder.

13. Introduction of legislation providing for specific remedies to enforce custody orders:

This matter is presently under discussion.

14. Introduction of uniform custody enforcement legislation which would implement the Hague Convention on the Civil Aspects of International Child Abduction and would extend the principles set out in this convention to enforcement of custody orders within the Province and between Provinces:

This matter is presently under discussion.

15. Appointment of specialists in family law to the provincially appointed judiciary:

The question of Unified Family Courts and so forth and the role of the province in appointing same is a matter that has received serious consideration; Alberta is awaiting the results of the major Unified Family Court projects that are presently in operation throughout Canada, prior to any further consideration of this issue.

March 1983

SASKATCHEWAN

Recommendations for provincial action:

1. The introduction of a computerized maintenance monitoring system is under study along with a consideration of an automated enforcement system.
2. Legislation on release of information from provincial agencies is not contemplated at this time and is subject to an anticipated report on the needs of provincial freedom of information legislation.
3. A computerized information bank is not under consideration at this time.
4. Automatic state initiated enforcement is under consideration.
5. Our enforcement procedure now is quite dependant on non-court procedures such as examination in aid of execution and garnishment and no change in this procedure is anticipated.
6. Legislation abolishing the one year rule is not anticipated at this time.
7. Enforcement of separation agreements by legislation is not anticipated at this time.
8. Saskatchewan has and uses the remedies set out in Recommendation 8 with the exception of (g).
9. Saskatchewan anticipates passing a Bill in the spring session of the Legislature which will implement the Uniform REMO Act.
10. Saskatchewan plans to review its family law and child custody law within the next year or two and legislation restraining molestation in custody matters will be considered. Certainly, such an order can now inherently be made by the court as part of its inherent power under applications regarding child custody.
11. Under the Deserted Wives' and Children's Maintenance Act of Saskatchewan, the Department of Social Services may now act to obtain maintenance for a spouse and children; however, this provision is not presently used and is indeed limited in scope. However, a wider

authority is under consideration, but any decision on this is dependant on a favourable decision on automatic enforcement.

12. Saskatchewan does not presently intend to expand the role of Crown counsel to encompass acting for extra-provincial parties in custody order situations, except for such role as the provincial Crown may decide to undertake as part of its role under the Hague Convention.
13. Specific legislation regarding new remedies for enforcement of custody orders will await a review of family law.
14. It is anticipated that legislation bringing the Hague Convention into force in Saskatchewan will be brought forward in the spring session of the Legislature.
15. As family law is now generally dealt with in the superior court of the province and as the province is presently considering expanding the role of the Unified Family Court throughout the province, which court is a superior court, we are not presently contemplating an involvement of the Provincial Court in this sphere. However, if the Unified Family Court is not expanded a shift to the Provincial Court would be possible.

January 1983

MANITOBA

Recommendations for Provincial Action:

1. Implementation of a computerized system for monitoring maintenance payments:

In 1980, Manitoba set up such a system.

2. Introduction of legislation requiring public agencies and individuals to release the address, place of employment, or any information in their possession which would assist in the location of a proposed respondent or defaulting payor:

Section 31.1(7) of The Family Maintenance Act of Manitoba provides for the release of this type of information. Section 31.1(7) provides as follows:

"In the course of investigative measures taken under clause (6)(a), the designated officer may require any person, the government or any agency of the government to disclose to the designated officer any particulars of the address of the person in default that it may have in its possession or control, and the person, government or agency of the government shall disclose the particulars to the designated officer upon being required to do so, notwithstanding anything to the contrary in any other Act of the Legislature."

3. A Computerized Information Bank to be maintained in conjunction with recommendations #1 and #2:

Manitoba has no such system.

4. Automatic state initiated enforcement of maintenance payments:

The Attorney-General's Department for the Province of Manitoba provides this service for all orders.

5. Increased emphasis on enforcement proceedings which would not involve Court hearings:

Manitoba has such a system, whereby the designated officers attached to the court have been instructed to take whatever measures that can be taken to enforce an order outside of court, such as the issuance of a garnishment order or the issuance of a writ of

execution. Only where a garnishment is not possible or not sufficient will the matter be brought to court for enforcement. Section 31.1(10) of The Family Maintenance Act provides the out-of-court remedies and procedures available:

"In the course of steps taken under subsection (5), but without restricting the generality of that subsection and whether or not a notice is given under clause (6)(b) or a notice is given or the person in default appears under subsection (9), the designated officer may initiate one or more of the following proceedings:

- (a) Proceedings to realize upon any bond or security deposited under section 25;
- (b) Proceedings for the imposition of the penalties provided in section 26;
- (c) Registration of the order in a Land Titles Office under section 27 and the taking of proceedings under The Judgments Act in pursuance of the registration;
- (d) The issuance of a garnishing order;
- (e) The issuance of a writ of execution;
- (f) The appointment of a receiver under Section 31."

6. Introduction of legislation that would abolish the one year rule of enforcement:

The Family Maintenance Act of Manitoba contains such a provision.

7. Introduction of legislation which would provide for enforcement of maintenance payments contained in separation agreements:

Manitoba has no such provision.

8. Introduction of legislation providing for specific remedies to enforce arrears of maintenance:

- (a) Continuing order of garnishment or attachment is provided for in The Garnishment Act and The Family Maintenance Act;

- (b) Writ of execution is provided for by The Family Maintenance Act;
- (c) and (d) The Family Maintenance Act provides that as a penalty for default, a person is liable to thirty days in jail and/or a fine not exceeding \$500.00;
- e) Security Deposit or Bond is provided for by The Family Maintenance Act;
- (f) Registration of Order against real property is provided for by The Family Maintenance Act;
- (g) Appointment of a Receiver is provided for by The Family Maintenance Act;
- (h) Warrant of Arrests where there is a fear of disposal of property or that the defaulter will flee the jurisdiction:

Manitoba does not have such a remedy;

- (i) Ex parte order restraining disposal of assets:

Manitoba does not have such a remedy.

- 9. Enactment of the proposed Uniform Reciprocal Enforcement of Maintenance Orders Act which has been adopted by the Uniform Law Conference of Canada and amended by the Federal/Provincial Committee on Enforcement:

Manitoba has passed this legislation with the change to Subsection 7(7)(c). The Act has been passed but not yet proclaimed. It is hoped that the legislation will be proclaimed within the next few months.

- 10. Introduction of uniform legislation providing for orders which would prohibit one spouse from molesting, annoying or harassing the other spouse or any child in the custody of that spouse:

Section 8(1)(d) of The Family Maintenance Act of Manitoba provides for this.

- 11. Introduction of legislation assigning maintenance payments to the provincial government where the recipient of maintenance is receiving social assistance:

The Family Maintenance Act of Manitoba and The Social Allowance Act of Manitoba provide for this.

12. Expansion of the role of the provincial Crown counsel in enforcement to include the enforcement of foreign custody orders:

Manitoba provides the services of Crown Attorneys to enforce foreign custody orders pursuant to The Child Custody Enforcement Act or the Divorce Act.

13. Introduction of legislation providing for specific remedies to enforce custody orders:

Manitoba has passed The Child Custody Enforcement Act which provides for these specific remedies to enforce custody orders.

14. Introduction of the Uniform Custody Enforcement Legislation which would implement the Hague Convention on the Civil Aspects of International Child Abduction and would extend the principles set out in this convention to enforcement of custody orders within the Province and between Provinces:

In 1982, Manitoba passed and proclaimed The Child Custody Enforcement Act which is based on the Uniform Child Custody Enforcement Act. This legislation implements the Hague Convention and extends these principles to the enforcement of custody orders within the Province and between the Provinces.

15. Appointment of specialists in family law to provincially appointed judiciary:

Manitoba is presently hoping to establish a Unified Family court system within the Province.

January 1983.

ONTARIO

Recommendations for Provincial Action:

1. Ontario maintains a computerized system which records total maintenance payments made to a family court on all files kept by the court. The data is aggregated by the month. Payments on individual court files are monitored manually at the family court level.
2. Family Law Reform Act, section 26, Children's Law Reform Amendment Act, 1982, section 40.
3. The development of a computerized information bank is not contemplated at this time.
4. and 5. Automatic enforcement mechanisms are available. Whether personnel are made available for automatic enforcement depends on resource allocation decisions at the individual family court level.
6. The so-called "one year rule" is not a problem in Ontario courts and therefore no legislation of this nature is contemplated.
7. Legislation providing for court enforcement of separation agreements has not been introduced in Ontario. However this matter may be considered in the context of a review of Ontario's Family Law Reform Act, presently underway.
8. Family Law Reform Act, Rules of the Provincial Court (Family Division).
9. Reciprocal Enforcement of Maintenance Orders Act, 1982 section 7(7).
10. Family Law Reform Act, section 34.
11. Family Law Reform Act, section 19(4).
12. The Ontario government does not provide counsel to enforce foreign custody orders at this time.
13. Children's Law Reform Amendment Act, 1982; Provincial Courts Act.
14. Children's Law Reform Amendment Act, 1982.
15. Expertise in family law would be taken into consideration on appointments to the Provincial Court (Family Division).

QUEBEC

Recommendations for Provincial Action:

1. Implementation of a computerized system for monitoring maintenance payments:

Quebec has such a system.

2. Introduction of legislation requiring the release of information which would assist in the location of a proposed respondent or defaulting payor:

Quebec has section 546.1 of the Code of Civil Procedure which says:

546.1 Where a judgement awarding support has become executory, a judge may, on the motion of the person entitled to support and if circumstances justify it, order a person to furnish the person entitled to support with the information he has on the residence and place of work of the debtor in default and, if need be, allow him to be interrogated to that effect before the prothonotary.

This article applies notwithstanding any inconsistent provision of a general law or special act providing for the confidentiality or non-disclosure of certain information or documents. It does not, however, apply to a person who has received the information in the practice of his profession and who is bound to the debtor by professional secrecy.

However, there is no similar provision for the enforcement of a custody order.

3. Development of a computerized information bank:

Quebec has no such information bank.

4. Automatic state initiated enforcement of maintenance payments:

The Act to Promote the Payment of Support (S.Q., 1980, c.21) provides for collection by the state but it is not an automatic enforcement system. As a matter of fact, the collectors of support payments will only act upon the application of the creditor spouse.

5. Increased emphasis on enforcement procedures which would not involve court hearings:

Where a seizure of salary by garnishment takes place for the execution of a judgment awarding support or if a claim to that effect is filed in the record of a seizure by garnishment, the seizure remains binding until a release is given (sec. 641.1 C.C.P.). The release can only be granted, however, after the arrears in payment have been made up. When the arrears have been made up, the debtor may apply to the prothonotary to have the seizure suspended and to make the support payments himself directly to the prothonotary (sec. 659.5 C.C.P.). If the latter considers that the guarantees offered by the debtor are sufficient, he grants the application and notifies the garnishee who then ceases to make the deposits (sec. 659.6 C.C.P.). If the debtor defaults on his payments, the seizure again becomes enforceable and the prothonotary notifies the garnishee who then has 10 days to deposit the amounts due (sec. 659.8 C.C.P.).

6. Introduction of legislation that would abolish the 1-year rule of enforcement:

The "one year rule" does not apply in Quebec. Section 2260 b) of the Civil Code of Lower Canada provides that arrears of support awarded by judgment are prescribed by three years.

7. Introduction of legislation which would provide for the enforcement of maintenance payments contained in separation agreements:

Such legislation is not contemplated at this time. Sections 822 to 822.5 of the Code of Civil Procedure state that a draft agreement has to be submitted to the court for approval. When granting separation as to bed and board or divorce following a joint application accompanied by a draft agreement, the court, by its judgment, confirms the agreement.

8. Introduction of legislation providing for specific remedies to enforce arrears of maintenance:

(a) Continuing order of garnishment - Quebec has this remedy under section 641.1 of the Code of Civil Procedure;

- (b) Seizure of moveables - Section 659.1 of the Code of Civil Procedure does allow for this remedy;
- (c) and (d) Imprisonment and Fines - Quebec does not have these remedies;
- (e) Security deposit or bond - Section 639 of the new Civil Code of Quebec does allow for this remedy;
- (f) registration of order against immoveables - Quebec has this remedy under section 2036 of the Civil Code of Lower Canada and the collector of support payments may have seizure taken against any immoveable property (section 661.1 of the Code of Civil Procedure);
- (g) to (i) Appointment of a receiver, warrant of arrest and ex parte order restraining disposal of assets - Quebec does not have these remedies.

9. Adoption of the proposed Uniform Reciprocal Enforcement of Maintenance Orders Act:

This recommendation is under consideration. Quebec amended their Reciprocal Enforcement of Maintenance Orders Act to make it applicable to reciprocating states outside of Canada, but it did not adopt the Uniform Act or the proposed amendment to section 7(7).

10. Introduction of uniform legislation providing for orders which would prohibit one spouse from molesting, annoying or harassing the other spouse or any child in the custody of that spouse:

This recommendation is under consideration.

11. Introduction of legislation assigning maintenance payments to the provincial government where the recipient of maintenance is receiving social assistance:

Quebec allows for this under section 13 to 13.2 of the Social Aid Act (R.S.Q., C.A-16).

12.to Recommendations concerning the enforcement of custody
14. orders:

These recommendations are under consideration. It is expected that the Child Abduction Act will be passed in 1983. In our civilian context, however, the system

provided in the Hague Convention might be considered as a better solution than a system based upon the Uniform Custody, Jurisdiction and Enforcement Act adopted by the Uniform Law Conference of Canada in 1981.

15. Appointment of specialists in family law to the provincially appointed judiciary:

This recommendation will be considered at a later date, when Quebec has its Provincial Family Court.

January 21, 1983

NEW BRUNSWICK

Recommendations for Provincial Action:

1. Implementation of a computerized system for monitoring maintenance payments:

New Brunswick has no such system.

2. Introduction of legislation requiring public agencies and individuals to release the address, place of employment, or any information in their possession which would assist in the location of a proposed respondent or defaulting payor:

New Brunswick has section 122 of the Child and Family Services and Family Relations Act which says:

"122(1) Where it appears to a court that,

(a) for the purpose of bringing an application under this Part; or

(b) for the purpose of the enforcement of an order for support, custody or access,

the proposed applicant or person in whose favour the order is made has need to learn or confirm the whereabouts of the proposed respondent or person against whom the order is made, the court may order any person or public agency to provide the court with the address that is contained in the records in its custody and the person or agency shall provide to the court such particulars as it is able to provide".

3. A computerized information bank to be maintained in conjunction with recommendations 1 and 2:

New Brunswick has no such system.

4. Automatic state initiated enforcement of maintenance payments:

New Brunswick has this method of enforcement in all Family Courts unless the payee wishes to opt out.

5. Increased emphasis on enforcement procedures which would not involve court hearings:

New Brunswick has enforcement officers located in each Family Court office who operate on a manual ledger

system and who have no enforcement powers. Upon default and failure of informal contact with the respondent in an attempt to collect monies owing, the enforcement officer swears an affidavit of arrears which commences the show cause procedure and the clerk of the court issues an order to attend to the respondent.

Section 123(6) of the Child and Family Services and Family Relations Act permits the clerk to dispose of default matters by providing:

"123(6) A judge of the court may designate a clerk, master or any other officer of the court to consider and dispose of applications made under this section, in which case the order of the clerk, master or other officer in respect of an application shall be the order of the court; but where a clerk, master or other officer is of the opinion that the jurisdiction of the court under the paragraph (3)(c) [imprisonment] should be exercised, he shall adjourn the hearing and refer the matter to the judge. 1982, c.13, s.5."

To date, this delegation power has been exercised by one court only and for the enforcement of maintenance orders made under provincial support legislation only, not divorce.

6. Introduction of legislation that would abolish the 1-year rule of enforcement:

New Brunswick Divorce Rules include a provision which makes it mandatory to seek leave to enforce arrears accrued prior to one year. The provincial Child and Family Services and Family Relations Act does not require leave but the common law "one-year rule" is generally applied.

7. Introduction of legislation which would provide for the enforcement of maintenance payments contained in separation agreements:

New Brunswick has this provision in section 134 of the Child and Family Services and Family Relations Act which states:

"134(1) Any agreement that contains a provision with respect to the support of a dependant by a person upon whom an obligation to support is imposed by this Part, including the payment of an amount to the Minister in respect of assistance or financial support provided by

him, and that conforms with requirements as to form that are prescribed in the regulations, may be filed with the court in the manner provided by regulation, and upon being filed has, for the purposes of enforcement, and subject to the provisions of this Part with respect to variation, the same force and effect as an order of the court made under this Part and shall be deemed to be an order made by the court.

8. Introduction of legislation providing for specific remedies to enforce arrears of maintenance:
 - (a) Continuing order of garnishment or attachment - the Child and Family Services and Family Relations Act does provide for a payment order under section 123(3) which applies to the enforcement of regular payments and arrears. The New Brunswick Divorce Rule has been amended to allow for a similar remedy but only with notice to the respondent;
 - (b) Writ of execution, warrant of distress, seizure of chattels - New Brunswick Divorce Rule allows for an order of seizure and sale. The Provincial Statute, under section 124, allows for a certificate of arrears to be filed as a judgment debt.
 - (c) Imprisonment - both the Provincial Statute and the Divorce Rules do allow for this remedy;
 - (d) Fine - New Brunswick does not have this remedy;
 - (e) Security deposit or bond - the Provincial Statute has this remedy under section 124(3);
 - (f) Registration of order against real property - the Provincial Statute provides in section 124(1) that a certificate of arrears may be entered and recorded in the Court as a judgment debt;
 - (g) Appointment of a receiver - New Brunswick does not have such a remedy;
 - (h) Warrant of arrest where there is a fear of disposal of property or that the defaulter will flee the jurisdiction - New Brunswick has this remedy only in relation to leaving the jurisdiction;
 - (i) Ex parte order restraining disposal of assets - New Brunswick has this remedy under section 119 of

the Provincial Statute, not under the Divorce Rule. This section states:

"119. In or pending an application under section 115 or an appearance to a notice under section 123, or where an order for support has been made, the court may make such interim or final order as it considers necessary for restraining the disposition or wasting of assets that would impair or defeat the claim or order for the payment of support."

9. Review of the proposed Uniform Reciprocal Enforcement of Maintenance Orders Act which has been adopted by the Uniform Law Conference of Canada:

New Brunswick has adopted this legislation with the proposed amendment to section 7(7)(c). It is presently in bill form.

10. Introduction of uniform legislation providing for orders which would prohibit one spouse from molesting, annoying or harassing the other spouse or any child in the custody of that spouse:

New Brunswick has such a provision under section 128 of the Child and Family Services and Family Relations Act.

"128. Upon application of a person who is living separate and apart from his spouse a court may make an order restraining the spouse of the applicant from molesting, annoying, harassing or interfering with the applicant or any children in the lawful custody of the applicant and may require the spouse of the applicant to enter into such recognizance as the court considers appropriate."

11. Introduction of legislation assigning maintenance payments to the provincial government where the recipient of maintenance is receiving social assistance:

New Brunswick allows for this under section 115(3) and (4) of the Provincial Statute. A written assignment is not necessary since the Minister has the power to make an application for maintenance with or without the consent of the dependent.

12. Expansion of the role of the provincial Crown counsel in enforcement to include the enforcement of foreign custody orders:

New Brunswick provides the services of Crown Prosecutors to enforce foreign custody orders.

13. Introduction of legislation providing for specific remedies to enforce custody orders:

New Brunswick has all the suggested remedies except posting of a security or bond and deposit of travel documents.

14. Introduction of uniform custody enforcement legislation which would implement the Hague Convention on the Civil Aspects of International Child Abduction and would extend the principles set out in this convention to enforcement of custody orders within the Province and between Provinces:

New Brunswick has passed this legislation.

15. Appointment of specialists in family law to the provincially appointed judiciary:

New Brunswick will have effectively eliminated this problem with the anticipated expansion of the Unified Family Court system within the province, in the near future.

January, 1983

NOVA SCOTIA

Recommendations for Provincial Action:

1. Nova Scotia has been doing some preliminary work on a computerized system for monitoring maintenance payments; however, we are continuing to process manually, pending the development of an "on-line system".
2. This recommendation is supportable; however, in Nova Scotia it would require an amendment to the Freedom of Information Act. If the recommendation is supported by most provinces, the matter will be referred for policy consideration.
3. Nova Scotia does not have a computerized information bank.
4. Nova Scotia is essentially following this recommendation. Enforcement officers are required to review their files on a regular basis and to initiate proceedings where there is default.
5. This recommendation is under active consideration. It has the support of many family court judges; however, the problem is that of quality. Staff will be needed to determine an appropriate course of action, short of a court hearing. In addition, there is reason to believe that many claimants will wish to have their day in court.
6. The "one year rule" does not apply in Nova Scotia.
7. Section 49 of the Family Maintenance Act provides for the enforcement of maintenance payments contained in a separation agreement.
8. Section 39 of the Family Maintenance Act provides for remedies by way of periodic garnishment, imprisonment and the issue of an execution order. Consideration is being given to giving an execution order for maintenance arrears priority over other execution orders.
9. It is expected that the Uniform REMO will be enacted in the Spring of 1983.
10. This recommendation is under consideration.

11. This recommendation has been the subject of previous consideration; however, it has not been acted upon because of cost factors.
12. In Nova Scotia the responsibilities of Crown Counsel have not included services concerning the enforcement of foreign custody orders.
13. Nova Scotia's experience concerning the enforcement of foreign custody orders has been limited to date. With the enactment of the Child Abduction Act in 1982 (i.e. to implement the Hague Convention) this whole matter of remedies will undoubtedly be given close attention.
14. The Hague Convention was enacted by the Child Abduction Act in 1982. The Act has not yet been proclaimed.
15. This recommendation will be considered at an appropriate time.

January, 1983

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14. The Hague Convention was enacted by the Child Abduction Act in 1982. The Act has not yet been proclaimed.
15. This recommendation will be considered at an appropriate time.

January, 1983

PRINCE EDWARD ISLAND

Recommendations for Provincial Action:

1. Due to the small volume, we do not need a computerized system for monitoring maintenance payments.
2. Due to our small geographic size and population, locating individuals does not present a problem.
3. As indicated above, we do not need a computerized information bank to assist us in enforcing P.E.I. orders or orders from other provinces.
4. We have automatic state initiated enforcement.
5. Administrative personnel conduct judgement debtor hearings and use the Sheriff to collect on judgements. An application to confirm a garnishee order on wages must be made to a judge, and we frequently use contempt proceedings.
6. There is no one year rule although we hesitate to go after arrears if the wife or mother did not try to collect the funds for a long period of time.
7. We have such legislation.
8.
 - (a) We use this remedy.
 - (b) We use this remedy.
 - (c) We use this remedy although sparingly.
 - (d) Not used.
 - (e) Not used.
 - (f) We use this remedy.
 - (g) Not used.
 - (h) This remedy is available but we would tend to rely on another province to pick up the enforcement.
 - (i) Remedy is available by way of injunction but tendency is to give notice to the other side.
9. We expect this new legislation to be passed in spring of '83.
10. We support the need for uniform legislation although the remedy is already available through an application to a judge.
11. We have such legislation but Social Services does not use it much.

12. Government does not intend to provide counsel except in legal aid or Hague cases.
13. (a) To aid in the recovery of the child:
 - (i) not used;
 - (ii) now available through an application to the judge;
 - (iii) not available and the police willingly assist;
 - (iv) not used.
- (b) penal sanction:
 - (i) remedy is now available;
 - (ii) not used.
14. Expect the Hague Convention will be passed this spring.
15. Superior Court judges handle all family law matters except inter-spousal assaults under the Criminal Code. We are not considering giving any family law jurisdiction to provincially appointed judges.

January, 1983

NEWFOUNDLAND

Recommendations for Provincial Action:

1. At the moment, there is no plan to introduce a computerized system for monitoring maintenance payments in the courts of Newfoundland. A study with respect to computerization was done recently at the Unified Family Court, and the proposal was rejected because of cost factors.
2. There has been no movement to legislate in this area in the Province of Newfoundland.
3. Not feasible at this time.
4. In the semi-automatic enforcement system being used in the Unified Family Court, enforcement is initiated by the Maintenance Enforcement Officer. Since this system is working well, it is hoped it may be expanded across the entire province.
5. Conciliation services are provided at the Unified Family Court in an effort to improve maintenance enforcement without recourse to courts. Enforcement of orders of corollary relief is by way of execution process and does not involve a court hearing.
6. Not applicable. There is no one year rule in this Province.
7. There is no action anticipated in this area at the moment.
8. All remedies outlined in this section, except fines, security deposits and receivers, are used in the Province of Newfoundland. The remedies outlined in (a) are available only by consent.
9. Newfoundland will be introducing the Uniform Reciprocal Enforcement of Maintenance Orders Act with an amendment to section 7(7) into the House of Assembly in 1983.
10. There are no legislative proposals being considered in this area, but this remedy is currently available through the courts.
11. This is presently being discussed and considered at the Unified Family Court.

12. This is being studied currently. At the moment, legal counsel is not provided by the Provincial Crown in the area of maintenance enforcement.
13. Family law legislation is currently under review in this Province, and the problems surrounding abduction of children are a major concern.
14. Newfoundland plans to introduce legislation adopting the Hague Convention in 1983, with a reservation concerning legal fees. The central authority will be the Attorney General.
15. Provincially appointed judges in Newfoundland have limited jurisdiction in family law matters.

February 8, 1983

CANADA

Recommendations for Federal Action:

16. Amendment of section 15 of the Divorce Act to enable ancillary maintenance and custody orders to be registered in any court designated by provinces in addition to or instead of the Superior Court of each province:

This recommendation is presently being considered within the Department of Justice, although in two provinces (British Columbia and Saskatchewan) the problem has been eliminated by amendment to Divorce Rules.

17. Amendment of section 11 of the Divorce Act to permit the making of orders for both payment and security of periodic and lump sum maintenance:

This recommendation is presently under review within the Department of Justice.

18. Appointment of specialists in family law to the federally appointed judiciary:

As vacancies occur the federal government will continue, where appropriate, to seek to identify the specialists in family law in considering the selection of appointees.

19. Passage of Bill C-38 (Garnishment, Attachment and Pension Diversion Act):

Bill C-38 was passed and received Royal Assent on June 22, 1982. Part I of the Act came into force on March 11, 1983 and Part II is expected to come into force later this summer.

20. Introduction of legislation to permit creditors of maintenance orders to apply to federal Ministers to attach or divert funds accruing or becoming due to the maintenance debtor:

This recommendation is presently under review within the Department of Justice. It should be noted that under Bill C-38 certain pension benefits can be diverted.

21. Introduction of legislation requiring all federal agencies and individuals subject to federal legislation, to release, upon court order, address or

employment particulars or other information which would serve to locate family members for the purpose of bringing applications for or enforcing maintenance and custody orders:

This recommendation is being reviewed within the Department of Justice.

22. Introduction of legislation limiting the use or release of passports or other international travel documents relating to children:

This matter is presently being reviewed within the Department of External Affairs.

23. Amendment of the Divorce Act to permit assignment of financial support benefits to the provincial Crown or to a federal Minister:

This recommendation is presently under review within the Department of Justice.

24. Amendment of section 11(1) of the Divorce Act to provide that ancillary maintenance orders, unless the court otherwise orders, are automatically binding on the estate of the debtor:

This recommendation is presently under review within the Department of Justice. As this could have implications for provincial succession laws it will require careful consideration.

25. Amendment of section 11(2) of the Divorce Act to permit applications for variation of ancillary maintenance and custody orders in other than the original court:

This recommendation is presently under review within the Department of Justice.

April, 1983

CATALOGUE OF MAINTENANCE
AND CUSTODY ORDER ENFORCEMENT
PERSONNEL AND PROCEDURES

Prepared by Federal Provincial
Committee on Enforcement of
Maintenance and Custody Orders
January 1983

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CHAPTER 1: CANADA

International Child Abduction:

Contact: Private International Law Section
Legal Advisory Division
Department of External Affairs
4th Floor, Tower "A"
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2 995-8807

Summary: The Department of External Affairs is responsible for all matters of international child abduction prior to ratification of the Hague Convention on the Civil Aspects of International Child Abduction and after ratification of the Convention, matters of international child abduction involving countries not bound by the Convention.

Contact: Micheline Langlois
Legal Adviser
Constitutional and International Law Section
Department of Justice
239 Wellington Street
Ottawa, Ontario
K1A 0H8 996-8127

Summary: Ms. Langlois can be contacted for information regarding the Hague Convention on the Civil Aspects of International Child Abduction.

GARNISHMENT AND ATTACHMENT OF FEDERAL CIVIL SERVANTS

Enforced Under: Garnishment, Attachment and Pension
Diversion Act
Garnishment and Attachment Regulations

Contact: Department of Justice
Vancouver Regional Office
Royal Centre
1900-1055 West Georgia Street
Vancouver, British Columbia
V6E 3P9
Attention: Garnishment Registry

Department of Justice
Edmonton Regional Office
Room 928, Royal Trust Tower
Edmonton Centre
Edmonton, Alberta
T5J 2Z2
Attention: Garnishment Registry

Department of Justice
Saskatoon Regional Office
Room 301, Churchill Building
229-4th Avenue South
Saskatoon, Saskatchewan
S7K 4E4
Attention: Garnishment Registry

Department of Justice
Winnipeg Regional Office
301 Centennial House
310 Broadway Avenue
Winnipeg, Manitoba
R3C 0S6
Attention: Garnishment Registry

Department of Justice
Toronto Regional Office
P.O. Box 57
Toronto Dominion Centre
Toronto, Ontario
M5K 1E7
Attention: Garnishment Registry

Department of Justice
Justice Building
239 Wellington Street
Ottawa, Ontario
K1A 0H8
Attention: Garnishment Registry

Department of Justice
Montreal Regional Office
Case Postale 938
Place d'Armes
Montreal, Quebec
H2Y 3J4
Attention: Garnishment Registry

Office of The Director-Taxation
65 Canterbury Street
P.O. Box 6300
Postal Station "A"
Saint John, New Brunswick
E2L 4H9
Attention: Garnishment Registry

Department of Justice
Halifax Regional Office
Toronto-Dominion Bank Building
1791 Barrington Street
12th Floor
Halifax, Nova Scotia
B1C 3L1
Attention: Garnishment Registry

Department of Justice
C/O War Veteran's Allowance Board
Dominion Building
Box 7700
Charlottetown, Prince Edward Island
C1A 8M9
Attention: Garnishment Registry

Office of The Director-Taxation
St. John's District Office
165 Duckworth Street
Sir Humphrey Gilbert Building
St. John's, Newfoundland
A1C 5X6
Attention: Garnishment Registry

Department of Justice
Yellowknife Regional Office
Suite 206, Bromley Building
Box 8
Yellowknife, Northwest Territories
X0E 1H0
Attention: Garnishment Registry

Whitehorse Crown Attorney's Office
Room 205, Casca Building
3105 Third Avenue
Box 1076
Whitehorse, Yukon Territory
Y1A 1E5
Attention: Garnishment Registry

Summary: Upon obtaining a valid garnishee summons, the garnishee summons must be served at the appropriate garnishment registry listed above.

The garnishment registries listed above can be contacted for further information.

CHAPTER 2: BRITISH COLUMBIA

Reciprocal Enforcement of Maintenance Orders

Enforced Under: Family Relations Act

Enforced By: Ministry of Attorney General
609 Broughton Street
Victoria, B.C.
V8V 1X4

Contact: Ms. Brenda Walt
Court Services
Ministry of Attorney General
850 Burdett Street.
Victoria, B.C.
V8W 1B4 (604) 387-1521

Summary: Upon referral for reciprocal enforcement, all administrative matters will be handled by the contact person referred to above and enforcement in Provincial Court will be conducted by counsel appointed by the Attorney General.

The respondent is summoned to show cause why an enforcement order should not be made and, depending on the facts and on the information available, there may be an order to pay, a filing against land, a garnishment, attachment of wages and for incarceration for up to thirty days upon default. In some circumstances, there may be a warrant of execution and incarceration for continuing failure to pay as ordered.

Court Houses and Registrars:

All REMO matters are handled centrally through this Province by the contact person listed above.

Family Court Counsellors:

This Province has about 200 full and part time Family Court Counsellors in 83 locations. If asked, a Family Court Counsellor would probably be willing to attempt to negotiate a settlement or

variation between applicant and respondent. This is, however, believed to be infrequently sought. More often, the respondent, after summons, will, if anything, attempt to settle with counsel appointed for the applicant.

Enforcement of Foreign Custody Orders:

Enforced Under: Sections 38 - 42 of Family Relations Act

Enforced By: Private Solicitor

Summary: The civil aspects of an alleged breach of a foreign custody order are handled by private counsel. Any criminal aspect is for consideration by Crown Counsel in the locality where the child is located or questions may be referred to Criminal Justice Branch of this Ministry, 609 Broughton Street, Victoria, B.C., (604) 384-4434.

Tracing Unit:

A tracing facility is established for other purposes and is available on a trial basis for Family Law matters. Requests for service should be directed to Family Law Department, Ministry of Attorney General, 609 Broughton Street, Victoria, B.C. V8V 1X4, (604) 384-4434. Speed and success are governed almost entirely by the amount of details supplied. Our Request for Search form is attached.

ANY/ALL INFO HELPS

Full name _____
Alias (if any) _____
Social Insurance No. _____
Driver's Licence & Prov. _____

Motor-vehicle Licence No. _____

FPS No. _____
Last known address and phone No.: _____

Birthdate _____

Married _____ Single _____ Other _____

Name and Address of next of kin: _____

Occupation _____
Employer _____
Address _____
Telephone No. _____

COPIES ATTACHED (check):

Traffic Ticket _____
Fine Information Notice _____

Court documents _____
Other (specify below) _____

REMARKS (Characteristics, etc.):

Originating office, address, and
phone No.: _____

Name of person to ask for when
checking back with originator: _____

File No. to quote _____

PRIORITY OF REQUEST (check):

Urgent _____
By (date) _____
Not Urgent _____

NATURE OF REQUEST (check):

Warrant _____
Summons _____
Fine _____
Other (specify below): _____

Note: For use of Tracing Unit
only.

Investigator _____
File No. _____
Date In _____
Region _____

Intra-Provincial Maintenance Orders:

Enforced Under: Divorce Act, Family Relations Act, Family & Child Service Act, Child Paternity & Support Act.

Enforced By: Divorce Act and Family Relations Act - Private Solicitors.
Other Acts - Ministry of the Attorney General.

Summary: Where the Crown has an interest or it is a REMO matter, this Ministry will conduct the case, otherwise, it is a private matter. The one exception to the latter is where there are children and there has been or there is likely to be serious physical violence: the Ministry will appoint counsel who will seek such orders as may be necessary, including maintenance, to stabilize the situation.

Intra-Provincial Custody Orders:

Enforced Under: Divorce Act, Family Relations Act

Enforced By: Private Solicitor

Summary: This is a private matter except when there has been or there is likely to be serious physical violence, the Family Law Department of this Ministry, (604) 384-4434, will appoint counsel who will seek such orders as may be necessary, including one relating to custody.

Legal Aid:

There is a Legal Aid system throughout the Province operated by the Legal Services Society, 555 West Hastings Street, Vancouver, B.C. V6B 4N6 ((604) 689-0741).

The services offered by the Society and the criteria by which availability is judged vary from time and all inquiries should, therefore, be directed to the Society.

Child Protection authority:

Enforced Under: Family & Child Service Act

Enforced By: (a) In all matters other than law:
Ministry of Human Resources,
614 Humboldt Street,
Victoria, B.C.
V8W 3A2

(b) In matters of law:
Family Law Department,
Ministry of Attorney General,
609 Broughton Street,
Victoria, B.C.
V8V 1X4

Contact: (a) In all matters other than law:

Ms. Leslie Arnold
Manager, Family & Child Service Division
Ministry of Human Resources
614 Humboldt Street
Victoria, B.C.
V8W 3A2 (604) 387-4411

(b) In matters of law:

Mr. Robin Bassett
Barrister & Solicitor
Family Law Department
Ministry of Attorney General
609 Broughton Street
Victoria, B.C.
V8V 1X4 (604) 384-4434

Ms. Jane Perry
Barrister & Solicitor
Family Law Department
Ministry of Attorney General
609 Broughton Street
Victoria, B.C.
V8V 1X4 (604) 384-4434

Summary: The Family Law Department arranges to provide
legal services for all functions of the
Superintendent of Family & Child Services.

Public Trustee or Official Guardian:

Enforced Under: Public Trustee Act
Infants Act
Family Relations Act

Enforced By: Public Trustee
Ministry of Attorney General
800 Hornby, Suite 265
Vancouver, B.C.
V6Z 2V5 (604) 685-2431

Contact: Clinton W. Foote
Public Trustee
Ministry of Attorney General
(as above)

Summary: The Public Trustee acts for children in
estate matters and does not generally become
involved in custody or maintenance.

All Matters Relating to Family Law:

Mr. John Morton
Barrister & Solicitor
Family Law Department
Ministry of Attorney General
609 Broughton Street
Victoria, B.C.
V8V 1X4 (604) 834-4434

Mr. Robin Bassett
Barrister & Solicitor
Family Law Department
Ministry of Attorney General
(as above) (604) 384-4434

Ms. Jane Perry
Barrister & Solicitor
Family Law Department
Ministry of Attorney General
(as above) (604) 384-4434

International Reciprocity Agreements:

Canada

Alberta
Manitoba
New Brunswick

Newfoundland
Northwest Territories
Nova Scotia
Ontario
Prince Edward Island
Quebec
Saskatchewan
Yukon Territory

U.S.A. States

California
Colorado
Connecticut
Idaho
Kansas
Maine
Michigan
Minnesota
Montana
Nebraska
Nevada

New Hampshire
New Mexico
New York State
North Dakota
Ohio
Oregon
Pennsylvania
Vermont
Virginia
Washington
Wisconsin

Others

Australian Capital Territory
Austria
Bailiwick of Guernsey
England and Northern Ireland (Including Wales & Scotland)
Fiji
Gibraltar
Hong Kong
Island of Barbados and its Dependencies
Isle of Man
New South Wales, Australia
New Zealand (including Cook Islands)
Northern Territory of Australia
Norway
Queensland, Australia
Republic of South Africa
Singapore
South Australia
Southern Rhodesia
States of Jersey
Tasmania, Australia
Territory of Papua and New Guinea
Victoria, Australia
Western Australia
Federal Republic of Germany (Including Land Berlin)

CHAPTER 3: ALBERTA

Reciprocal Enforcement of Maintenance Orders:

Enforced Under: Reciprocal Enforcement of Maintenance Orders Act and Domestic Relations Act

Enforced By: The Department of the Attorney General

Contact: Wanda Fish
Crown Counsel
Department of the Attorney General
Family & Juvenile Branch
Room 2026, Law Courts Building
1A Sir Winston Churchill Square
Edmonton, Alberta
T5J 0R2

Summary: Upon referral, all administrative matters will be handled by the contact person. Presentation of the application will be handled in Edmonton and Calgary by Attorney General personnel. In all other areas private counsel will be retained for a contested hearing or legal argument if required.

The proceedings are show cause in nature.
The usual order is an Order to pay.
Attachment of wages, execution against land and incarceration are available.

Court Houses and Registrars:

This is not applicable as all matters at present are handled centrally by the contact person in the province.

Family Court Counsellors:

The Department of Social Services and Community Health has assumed responsibility for counselling and social support services associated with Family Court offered to all people regardless of whether or not they are receiving social allowances in the Province.

Legal Aid:

There is a Legal Aid system available. All inquiries should be directed to the office of the Director:

Barry J. Cavanaugh
Legal Aid Society
3rd Floor, Melton Building
10310 Jasper Avenue
Edmonton, Alberta
T5J 2W4

(403) 427-7575

Child Protection Authority:

Enforced Under: Child Welfare Act

Enforced By: Department of Social Services and
Community Health
Seventh Street Plaza, South Tower
10030, 107 Street
Edmonton, Alberta

Contact: Sharon Heron
Director of Child Welfare
6th Floor, Centre West Building
10030 107 Street
Edmonton, Alberta (403) 427-6370

Legal Services to Director of Child Welfare
are the responsibility of the Department
of the Attorney General.

Contact: Director of the Family & Juvenile Branch
3rd Floor, Bowker Building
9833 109 Street
Edmonton, Alberta
T5K 2E8 (403) 427-5050

All Matters Relating to Family Law:

John R. Basey
Director, Family & Juvenile Branch
Department of the Attorney General
Criminal Justice Division
3rd Floor, Bowker Building
9833 109 Street
Edmonton, Alberta
T5K 2E8 (403) 427-5050

International Reciprocity Agreements:

CANADA - all provinces and territories

UNITED STATES OF AMERICA

- State of California

OTHERS

England
Wales
Scotland
Island of Barbados
Island of Malta
Isle of Man
Republic of South Africa
Republic of Singapore
Commonwealth of Australia
 State of Victoria
 State of New South Wales
 State of Queensland
 State of South Australia
 State of Tasmania
 State of Western Australia
 Australian Capital Territory
 The Northern Territory of Australia
 Territory of Papua and New Guinea
New Zealand
States of Jersey

CHAPTER 4: SASKATCHEWAN

Reciprocal Enforcement of Maintenance Orders

Enforced Under: Reciprocal Enforcement of Maintenance Orders Act, Divorce Act and Queen's Bench Divorce Act Rules

Enforced By: Department of Justice
2476 Victoria Avenue
Regina, Saskatchewan
S4P 3V7

Contact: Ms. Judith Falle
Crown Solicitor
Civil Law Branch
Department of Justice
(as above) 565-5461

Mr. Wayne Mulholland
Crown Solicitor
Civil Law Branch
Department of Justice
(as above) 565-5470

Ms. Marg Pelletier
Secretary
Civil Law Branch
(as above) 565-5462

Summary: On the request of a reciprocal jurisdiction, solicitors of the Civil Law Branch will supervise the enforcement of foreign maintenance orders and will attend to court (Queen's Bench) to see to the enforcement thereof.

Maintenance orders are generally enforced by use of garnishment (Attachment of Debts Act), execution (Execution Act), registration against land (Deserted Wives' and Children's Maintenance Act), and show cause hearing.

Court Houses and Registrars:

Court House, Battleford Saskatchewan
SOM 0E0

Local Registrar
D.I. Dament
(937-2688)

Court House, Estevan	Local Registrar D.W. Henneberg (634-6411)
Court House, Gravelbourg	Local Registrar J.W. Kessler (648-2233)
Court House, Humboldt	Local Registrar W. Siemens (682-2522)
Court House, Kerrobert	Local Registrar (834-2221)
Court House, Melfort Provincial Building S0E 1A0	Local Registrar V.J. Johansen (752-9388)
Court House, Melville	Local Registrar S. Urbanowski (728-4424)
Court House, Moose Jaw S6H 4P1	Local Registrar D. Paquin (J693-6105)
Court House, Moosomin	Local Registrar W.E. Dammann (435-2929)
Court House, Prince Albert S6H 4W7	Local Registrar I.W. Dillabaugh (764-4462)
Court House, Regina 2425 Victoria Avenue, S4P 3V7	Local Registrar G. Ullman (565-5384)
Court House, Saskatoon 520 Spadina Crescent E., S7K 3G7	Local Registrar M. Peterson (664-5137)
Court House, Shaunavon	Local Registrar M.G. Koski (297-2531)
Court House, Swift Current S9H 0J4	Local Registrar M.G. Koski (773-7345)

Court House, Weyburn

Local Registrar
W.E. Dammann
(842-4657)

Court House, Wynyard

Local Registrar
W. Siemens
(554-2113)

Court House, Yorkton
S3N 0C2

Local Registrar
S. Urbanowski
(783-9414)

Unified Family Court
9th Floor, Canterbury Towers
224 - 4th Avenue S.
Saskatoon, Saskatchewan
S7K 5M5

Local Registrar
M. Herauf
(664-5202)

Family Court Counsellors:

Unified Family Court
9th Floor, Canterbury Towers
224 - 4th Avenue South
Saskatoon, Saskatchewan
S7K 5M5

Co-ordinator of
Social Services
(for Unified Court)
(664-6107)

Enforcement of Foreign Custody Orders:

Enforced Under: Extra-Provincial Custody Order Enforcement
Act, Divorce Act

Enforced By: Private Solicitor

Summary: Saskatchewan does not become involved in the enforcement of foreign custody orders except where the matter falls within the Criminal Code sections regarding child abduction. A person wishing to pursue enforcement of his custody order in Saskatchewan should engage private counsel.

Tracing Unit:

No specific tracing facilities are available in Saskatchewan in maintenance or custody order matters beyond the usual resort to the Sheriff's office for service of process.

Intra-Provincial Maintenance Orders:

Enforced Under: Deserted Wives' and Children's Maintenance Act, Children of Unmarried Parents Act, Infants Act

Enforced By: Private Solicitor

Summary: The Saskatchewan Attorney General's Department does not act for Saskatchewan residents in obtaining or enforcing maintenance orders involving other Saskatchewan residents. This is a matter which the parties must pursue by the use of private counsel or Legal Aid.

Intra-Provincial Custody Orders:

Enforced Under: Infants Act
Divorce Act

Enforced By: Private Solicitor

Summary: The Department of Justice in Saskatchewan does not act to obtain or enforce custody orders involving Saskatchewan residents and such residents must obtain their own counsel.

Legal Aid:

Saskatchewan Community Legal
Services Commission
311 - 21st Street East
Saskatoon, Saskatchewan
S7K 0C1

Chairman, Ian J. Wilson,
General Counsel
Harold P. Pick, Q.C.
Staff Solicitor,
Sheila P. Whelan

Moose Jaw & District
Legal Services Society
113 - 110 Ominica Street West
Moose Jaw, Saskatchewan
S6H 6V2

Legal director,
Mervyn Shaw

Regina Community Legal Services
Society
2331 - 11th Avenue
Regina, Saskatchewan
S4P 0K2

Director, Michael B. Ryan

Valley Legal Assistance Clinic
Society
203 - 220 - 3rd Avenue South
Saskatoon, Saskatchewan
S7K 1M1

Legal Director,
Betty Lou Huculak

Saskatoon Legal Assistance Clinic
Society
115 - 20th Street West
Saskatoon, Saskatchewan
S7M 0W7

Legal Director,
Edward Holgate

Meadow Lake & District Legal
Services Society
220 Centre Street, Box 1630
Meadow Lake, Saskatchewan
S0M 1V0

Legal Director,
George Thurlow

Prince Albert & District
Community Legal Services Society
110 - 11th Street East
Prince Albert, Saskatchewan
S6V 1A1

Legal Director,
James Crane

Battleford & Area Legal Services
Society
1192 - 103rd Street
North Battleford, Saskatchewan
S9A 1K6

Legal Director,
Donald Cameron

Parkland Legal Assistance Society
8 Myrtle Avenue, Box 69
Yorkton, Saskatchewan
S3N 2V6

Legal Director,
David B. Bright

Southwest Community Legal Services
150 - 1st Avenue N.W., Box 817
Swift Current, Saskatchewan
S9H 3W8

Legal Director,
(Vacant)

Pasqua Community Legal Services
Society
101 Burrows West, Box 2680
Melfort, Saskatchewan
S0E 1A0

Legal Director,
Jane Lancaster

Qu'Appelle Region Community
Legal Services Society
3 - 281 Albert Street
Regina, Saskatchewan
S4R 2N5

Legal Director,
David W. Andrews

South East Saskatchewan Legal
1314 B - 3rd Street, Box 326
Estevan, Saskatchewan
S4A 2A4

Legal Director,
Timothy White

Yetha Ayisiniwk Legal Services
Society
P.O. Box 510
La Ronge, Saskatchewan
S9J 1L0

Legal Director,
Timothy Quigley

Child Protection Authority:

Enforced Under: Family Services Act

Enforced By: Department of Social Services,
1920 Broad Street,
Regina, Saskatchewan.
S4P 3V6

Contact: Ms. Betty Ann Pottruff
Co-ordinator, Legal Services
for Social Services
2476 Victoria Avenue
Regina, Saskatchewan. 565-5360
S4P 3V7 or as above 565-5603

or

Mr. Richard Hazel,
Co-ordinator, Child
Protection Services,
1920 Broad Street
(as above) 565-3648

Summary: The Department of Justice or fee-for-service
agents act for the Department of Social Services
in child protection cases and the Family Services
Act does make provision for the enforcement of
extra-provincial wardship orders.

Public Trustee or Official Guardian:

Enforced Under: Infants Act

Enforced By: Department of Justice
2476 Victoria Avenue,
Regina, Saskatchewan.
S4P 3V7

Contact: Ms. Lorelle Schoenfeld,
Deputy Official Guardian,
(as above) 565-5441

Summary: The Official Guardian acts for children in estate matters and shall act for children where so ordered by the court but does not generally take part in custody or maintenance matters involving children.

All Matters Relating to Family Law:

Ms. Betty Ann Pottruff
Co-ordinator, Legal Services
for Social Services
Department of Justice
2476 Victoria Avenue
Regina, Saskatchewan 565-5360
S4P 3V7

International Reciprocity Agreements:

U.S.A. States:

California
Delaware
Maryland
Massachusetts
Minnesota
New York
North Carolina
North Dakota

Others

Australian Capital Territory
Barbados
Fiji
Guernsey
Isle of Man
Jersey
New South Wales, Australia
New Zealand
Northern Territory of Australia
Papua and New Guinea
Queensland, Australia
Tasmania, Australia
United Kingdom
Victoria, Australia
Western Australia, Australia
Zimbabwe

CHAPTER 5: MANITOBA

Reciprocal Enforcement of Maintenance Orders

Enforced Under: Reciprocal Enforcement of Maintenance Orders Act and Family Maintenance Act.

Enforced By: Department of the Attorney General
Civil Litigation Branch
6th Floor - 405 Broadway Avenue
Winnipeg, Manitoba
R3C 3L6

Contact: Ms. Catherine Everett
Departmental Solicitor
Family Law Unit
Civil Litigation Branch
Department of the Attorney General
(Address as above) 944-2850

Summary: On the request of a reciprocal jurisdiction, solicitors from the Civil Litigation Branch will attend on the enforcement of foreign maintenance orders that are enforced in the Provincial Judges' Court (Family Division) of Winnipeg. Outside the city of Winnipeg, Designated Officers attached to the Court will attend on the enforcement of foreign maintenance orders.

With respect to provisional orders of maintenance that are forwarded to Manitoba for confirmation, the Civil Litigation Branch, or an agent acting on their behalf, will represent the complainant.

Maintenance Orders are generally enforced by means of a Garnishment Order or a show cause hearing. Part IV of the Family Maintenance Act sets out the remedies available.

Enforcement of Foreign Custody Orders:

Enforced Under: The Child Custody Enforcement Act and Divorce Act.

Enforced By: Crown Counsel attached to the Family Law Unit of the Attorney General's Department or counsel retained on behalf of the Crown.

Summary: Manitoba's Attorney General's Department provides Crown Counsel to enforce foreign custody orders by means of the Child Custody Enforcement Act or the Divorce Act. A person wishing to pursue enforcement of a foreign custody order in Manitoba should contact the Attorney General's Department.

Contact: Robyn Moglove Diamond
Head of the Family Law Unit
Civil Litigation Branch
Department of the Attorney General
6th Floor - 405 Broadway Avenue
Winnipeg, Manitoba.
R3C 3L6

Tracing Unit:

The designated officer attached to the Family Court assists in tracing people for purposes of enforcing domestic court orders.

Intra-Provincial Maintenance Orders:

Enforced Under: Family Maintenance Act

Enforced By: The Maintenance Enforcement Program operated by the Attorney General's Department.

Summary: Maintenance orders, whether intra-provincial or inter-provincial, can be enforced in Manitoba through the computerized maintenance enforcement program which is operated by the Department of the Attorney General. Part IV of the Family Maintenance Act sets out the procedure. Maintenance orders which are enrolled in the program are regularly monitored by computer. The computer will automatically take note of any default in the payment of maintenance. When this occurs, enforcement proceedings are taken immediately on behalf of the recipient without that person having to take action. Ten working days after payment is due, where payment has not been received, the name of the defaulter comes up on a ten day default listing. The file is manually pulled and appropriate action is taken such as garnishment, show cause, or warrant. Garnishment is the most ideal type of enforcement. However, when

garnishment is not appropriate or not sufficient, the matter is brought to court for a show cause hearing. At the hearing, the Civil Litigation Branch of the Attorney General's Department usually provides Crown counsel to represent the complainant. In some of the rural areas of Manitoba, a designated officer appears on behalf of the complainant.

Intra-Provincial Custody Orders:

Enforced Under: Child Custody Enforcement Act and the
Divorce Act.

Enforced By: Private Solicitor.

Child Protection Authority:

Enforced Under: Child Welfare Act

Enforced By: The Director of Child Welfare or
private child caring agencies or
Child Welfare Committee

Contact: Robyn Moglove Diamond
Head of the Family Law Unit
Civil Litigation Branch
Department of the Attorney General
6th Floor - 405 Broadway Avenue
Winnipeg, Manitoba
R3C 3L6 944-2841

Public Trustee:

Enforced Under: The Public Trustee Act
Queen's Bench Act

Enforced By: The Office of the Public Trustee
Department of the Attorney General
7th Floor - 405 Broadway Avenue
Winnipeg, Manitoba
R3C 3L6

Contact: Mr. J.D. Raichura
Public Trustee
7th Floor - 405 Broadway Avenue
Winnipeg, Manitoba.
R3C 3L6 944-2703

Summary: The Public Trustee does not act for children
 in custody or maintenance matters.

All Matters Relating to Family Law:

Ms. Robyn Moglove Diamond
Head, Family Law Unit
Civil Litigation Branch
Department of the Attorney General
6th Floor - 405 Broadway Avenue
Winnipeg, Manitoba
R3C 3L6
944-2841

LIST OF RECIPROCATING STATES

Excerpt from Manitoba Regulation 100/82

(May 22, 1982, The Manitoba Gazette, Vol.111, No.21)

1. The states hereinafter named are declared to
be reciprocating states for the purposes of
the Reciprocal Enforcement of Maintenance
Orders Act, namely:

A. In Africa:

Republic of Ghana;
Republic of Zimbabwe;

B. In Asia:

Republic of Singapore;

C. In Australia and Polynesia:

Commonwealth of Australia;
Dominion of New Zealand;
Fiji;
Territory of Papua and New Guinea;

D. In Canada:

Province of Alberta;
Province of British Columbia
Province of New Brunswick;
Province of Newfoundland;
Province of Nova Scotia;
Province of Ontario;
Province of Prince Edward Island;
Province of Quebec;

Province of Saskatchewan;
Northwest Territories;
Yukon Territory;

E. In Central America and West Indies:

Barbados;

F. In Europe:

England and Northern Ireland;
Islands of Guernsey, Alderney and Sark;
State of Jersey;
The Isle of Man;
Norway;
Scotland;
West Germany;

F. In the United States of America:

State of Alaska;
State of Arizona;
State of Arkansas;
State of California;
State of Colorado;
State of Connecticut;
State of Delaware;
State of Georgia;
State of Idaho;
State of Illinois;
State of Indiana;
Commonwealth of Kentucky;
State of Louisiana
State of Maine;
State of Maryland;
Commonwealth of Massachusetts;
State of Michigan
State of Minnesota;
State of Montana;
State of Nebraska;
State of Nevada;
State of New Hampshire;
State of New Jersey;
State of New Mexico;
State of New York;
State of North Carolina;
State of North Dakota;
State of Oklahoma;
State of Oregon;
Commonwealth of Pennsylvania;

State of Rhode Island and Providence Plantations;
State of South Dakota;
State of Tennessee;
State of Texas;
State of Utah;
State of Vermont;
Commonwealth of Virginia;
State of Washington;
State of Wisconsin;
State of Wyoming.

2. Manitoba Regulation 254/80 is repealed.
3. This Regulation is effective on, from and after the date of the day it is filed with the Registrar of Regulations. (May 10, 1982).

CHAPTER 6: ONTARIO

Reciprocal Enforcement of Maintenance Orders

Enforced Under: Reciprocal Enforcement of Maintenance Orders
Act, 1982

Contact: Mrs. Joan Tilley
Reciprocity Office Administrator
Crown Law Office - Civil Law
Ministry of the Attorney General
17th Floor, 18 King Street East
Toronto, Ontario
M5C 1C5

Summary: The Attorney General for Ontario does not
provide counsel for the enforcement of foreign
maintenance orders.

Maintenance orders are generally enforced by a
show cause hearing after default.

Various mechanisms of enforcement are available:
execution, garnishment, attachment, debtor
examination, contempt, committal. Attachment is
the most useful and should be specifically
requested by the claimant in the request for
enforcement.

Court Houses, Registrars and Court Counsellors

Incoming orders under REMO legislation are processed through
the reciprocity office and assigned to the appropriate
court. In the absence of a request otherwise, the orders are
always assigned to one of the fifty-five family courts in
Ontario.

The court will then advise the initiating court of
the proper address for further correspondence and of
whatever support personnel are available.

Enforcement of Foreign Custody Orders

Enforced Under: Children's Law Reform Act
Divorce Act
Hague Convention

Enforced By: Private Solicitor

Summary: The Attorney General for Ontario does not provide counsel for the enforcement of custody orders under this legislation. Claimant must employ private counsel in Ontario.

While the province does have some responsibilities for processing orders under the Hague Convention, the extent of such responsibilities has not been defined to date. In any case, it has not been decided whether orders from other provinces may be submitted under the Hague Convention.

Tracing Unit:

An informal tracing service using driver licence records and the services of the Ministry of Community and Social Services is available.

There are no criteria governing use of the system. However requests from outside Ontario are unlikely to be met where a request from Ontario would not receive similar treatment in the requesting jurisdiction.

Ontario legislation provides for a court order to compel any person or public agency to disclose information concerning the location of a respondent. (Family Law Reform Act, section 26; Children's Law Reform Act, section 40)

Intra-Provincial Maintenance Orders

Enforced Under: Family Law Reform Act

Enforced By: Private solicitor

Summary: The Attorney General for Ontario does not provide counsel in these matters.

Intra-Provincial Custody Orders

Enforced Under: Children's Law Reform Act
Divorce Act

Enforced By: Private solicitor

Summary: The Attorney General for Ontario does not provide counsel in these matters.

Legal Aid:

The Ontario Legal Aid Plan is available to residents of Ontario and non-residents who meet the criteria for eligibility.

Child Protection Authority

Enforced Under: Child Welfare Act

Enforced By: Ministry of Community and Social Services

For information as to jurisdiction and procedures, contact:

Associate Deputy Minister
Children's and Adult's Policy
and Program Development Division
Ministry of Community and Social
Services
6th Floor, Hepburn Block
Queen's Park, Toronto
M7A 1E9

Summary: The Attorney General for Ontario does not provide counsel in civil proceedings in these matters. Counsel are usually provided through the Ministry of Community and Social Services or related agencies.

Official Guardian

Enforced Under: Judicature Act
Child Welfare Act
Surrogate Courts Act
Supreme Court rules with respect to divorce proceedings.

Contact: Office of the Official Guardian
6th Floor, 180 Dundas Street West
Toronto, Ontario
M5G 1Z8

Summary: The Official Guardian may take jurisdiction under various statutes. In addition, the Official Guardian may act in any matter where so ordered by a judge.

In any divorce action where children are involved, the Official Guardian is required to investigate and file a report with the court.

Generally the Official Guardian does not take part in custody or maintenance matters.

Legal Matters Relating to Family Law:

The Attorney General for Ontario does not have counsel assigned to appear in family proceedings or enforce family law orders.

For information concerning policy development in the family law of Ontario, contact:

Mr. Craig Perkins or Mr. Allan Shipley
Ministry of the Attorney General
15th floor
181 King Street East
Toronto, Ontario
M5C 1C5

LIST OF RECIPROCATING STATES

Excerpt from Ontario Regulation 893

1. The states named in the Schedule are declared to be reciprocating states for the purposes of the Act.
R.R.O. 1970, Reg. 771, s.1.

Schedule

1. The following Provinces and Territories of Canada:

- i. Alberta
- ii. British Columbia
- iii. Manitoba
- iv. New Brunswick
- v. Newfoundland
- vi. Northwest Territories
- vii. Nova Scotia
- viii. Prince Edward Island
- ix. Quebec
- x. Saskatchewan
- xi. Yukon

2. The following States of the United States of America:

- i. Arkansas
- ii. Arizona
- iii. California
- iv. Colorado
- v. Delaware

- vi. Georgia
- vii. Louisiana
- viii. Maryland
- ix. Massachusetts
- x. Michigan
- xi. Minnesota
- xii. Montana
- xiii. Nebraska
- xiv. New Mexico
- xv. Nevada
- xvi. New York
- xvii. North Dakota
- xviii. North Carolina
- xix. Ohio
- xx. Oregon
- xxi. Pennsylvania
- xxii. South Dakota
- xxiii. Texas
- xxiv. Virginia
- xxv. Washington
- xxvi. Wisconsin

3. The following States and Territories of Australia:

- i. Capital Territory of Australia
- ii. New South Wales
- iii. Northern Territory of Australia
- iv. Queensland
- v. South Australia
- vi. Tasmania
- vii. Victoria
- viii. Eastern Australia

- 4. Fiji.
- 5. Gibraltar.
- 6. Guernsey, Alderney and Sark.
- 7. Isle of Man.
- 8. Malta and its dependencies.
- 9. New Zealand and the Cook Islands.
- 10. Papua and New Guinea.
- 11. Republic of Ghana.
- 12. Southern Rhodesia (Zimbabwe).

13. States of Jersey.

14. Union of South Africa.

15. United Kingdom.

R.R.O. 1970 Reg. 771, Sched; O. Reg. 504/72, s.1; O. Reg. 315/73, s.1; O. Reg. 705/74, s.1; O. Reg. 29/75, s.1; O. Reg. 922/75, s.1; O. Reg. 125/76, s.1; O. Reg. 126/77, s. 1; O. Reg. 433/77, s. 1; O. Reg. 820/77, s.1; O. Reg. 933/77, s. 1; O. Reg. 146/78, s.1; O. Reg. 209/78, s. 1; O. Reg. 441/78, s.1; O. Reg. 120/79, s. 1; O. Reg. 150/79, s. 1; O. Reg. 287/79, s. 1; O. Reg. 839/79, s.1; O. Reg. 109/80, s.1; O. Reg. 174/80, s. 1; O. Reg. 324/80, s.1; O. Reg. 473/80, s.1; O. Reg. 578/80, s.1; O. Reg. 726/80, s.1; O. Reg. 1115/80, s.1.

CHAPTER 7: QUEBEC

Reciprocal Enforcement of Maintenance Orders

Enforced Under: The Act Respecting Reciprocal Enforcement of Maintenance Orders (R.S.Q., c. e-1.9; S.Q., 1983, c. 32, s. 81 to 87)

The Act to Promote the Payment of Support
(S.Q., 1980, c.21)

The Divorce Act (R.S.C., 1970, c.D-8, s. 14 and 15)

The Act to Secure the Carrying Out of the Entente between France and Quebec Respecting Mutual Aid in Judicial Matters (R.S.Q., c. A-20.1, title VII).

Enforced by: The collectors of support payments who come under the Department of Justice and who are attached to the office of the prothonotary of the Superior Court in each of the judicial districts. The collector in the district in which the judgment has been filed or registered may act as seizing creditor.

Contact: Me Alice Mercier
Direction générale des
affaires civiles et pénales
1200, route de l'Eglise
Sainte-Foy (Québec)
G1V 4M1 (418) 643-1441

Summary: On the request of a reciprocal jurisdiction, the collector in the district in which the judgment has been filed or registered will assume the task of collecting the support, without charge to the creditor. The collector acts as the seizing creditor for the judgment creditor and may proceed with a "permanent" seizure by garnishment (s. 641.1 of the Code of Civil Procedure). He may also have seizure effected against any other moveable (s. 659.1 of the Code Civil Procedure) or immoveable property (s. 661.1 of the Code of Civil Procedure). The costs of the execution are payable by the debtor.

COURT HOUSES AND REGISTRARS

DISTRICT	COURT HOUSE	Prothonotaries of the Superior court and registrars in divorce
1) Abitibi	a) 891, 3e Rue ouest Amos, J9T 2T4 Ph. (819) 732-6577	Simon Marcotte Jean Grenier (adj.)
	b) Edifice Gemmec 329, 3e Rue Chibougamau, G8P 1N4 Ph. (413) 748-6411	Julien Lapointe (adj.) Denise Plourde (adj.)
	c) 900, 7e Rue Val-D'Or, J9P 3P8 Ph. (819) 825-6462	Louis-Marie Chabot
2) Arthabaska	800, boul. Bois-Francis Arthabaska, G6P 5W5 Ph. (819) 357-2054	Me Pierre Sanche Nicole S. Pothier (adj.)
3) Beauce	795, ave du Palais St-Joseph de Beauce G0S 2V0 Ph. (418) 397-5251	Me J.-Claude Morin Me André Gagné (adj.)
4) Beauharnois	180, Salaberry Valleyfield, J6T 2J2 Ph. (514) 373-3244	Me Paul Brodeur
5) Bedford	a) 920, rue Principale Cowansville, J2K 1K2 Ph. (514) 263-3520	P.E. Bélisle Francine Nadeau (adj.)
	b) 77, rue Principale Granby, J2G 9B3 Ph. (514) 372-6635	Aimé Beaudry
6) Bonaventure	Rue Principale, C.P. 517 New-Carlisle, G0C 1Z0 Ph. (418) 752-3376	Me Jean-Louis Langlois
7) Chicoutimi	202, Jacques-Cartier est C.P. 370 Chicoutimi, G7H 5C5 Ph. (418) 543-4411	Me André-Gaétan Corneau (418) 543-2455 Gabrielle L'Espérance (adj.)

COURT HOUSES AND REGISTRARS

DISTRICT	COURT HOUSE	Prothonotaries of the Superior court and registrars in divorce
8) Drummond	1680, boul. St-Joseph Drummondville, J2C 2G3 Ph. (819) 478-2513	Jacques Villeneuve
9) Frontenac	693, St-Alphonse ouest C.P. 579 Thetford Mines, G6G 5T6 Ph. (418) 338-2118	Gilles E. Pelletier
10) Gaspé	a) rue Principale C.P. 188 Percé, G0C 2L0 Ph. (418) 782-2055	Jean Bourget
	b) Havre-Aubert Iles-de-la-Madeleine G0B 1J0 Ph. (418) 937-2202	Laurent Cormier (adj.)
11) Hauterive	71, Mance Baie-Comeau, G4Z 1N2 Ph. (418) 296-5534	Me Yvon Corriveau Claude Rostan (adj.)
12) Hull	17, Laurier Hull, J8X 4C1 Ph. (819) 771-3296	Roger Rozon Gérard Lacroix (adj.)
13) Iberville	109, St-Charles Saint-Jean, J3B 2C2 Ph. (514) 347-3715	André Beauchamp
14) Joliette	450, St-Louis Joliette, J6E 2Y9 Ph. (514) 756-0544	Me Daniel Larivière Me Michel Boudrias (adj.)
15) Kamouraska	33, de la Cour Rivière-du-Loup, G5R 1J1 Ph. (418) 862-3579	Ubald Savard
16) Labelle	645, De la Madone C.P. 116 Mont-Laurier, J9L 3G9 Ph. (819) 623-2333	Raymond Fortier

COURT HOUSES AND REGISTRARS

DISTRICT	COURT HOUSE	Prothonotaries of the Superior Court and Registrars in divorce
17) Laval	1750, boul. de la Concorde Laval, H7G 2E7 Ph. (514) 663-7111	
18) Longueuil	201, Place Charles-Le- moyne Longueuil, J4K 2T5 Ph. (514) 670-6163	
19) Mingan	425, boul. Laure Sept-Iles, G4R 1X6 Ph. (418) 962-2154	L.-Armand Vigneault
20) Montmagny	25, Palais de justice Montmagny, G5V 1P6 Ph. (418) 248-0909	Gilles Lamontagne
21) Montréal	1, Notre-Dame est Montréal, H2Y 1B6 Ph. (514) 873-3360	Me Jacques A. Dufour (514) 873-6331 Michel Côté (adj.)
22) Pontiac	159, John Campbell's Bay, J0X 1K0 Ph. (819) 648-5577	Prothonotary (vacant) Ella Romain (adj.)
23) Québec	12, St-Louis Québec, G1R 4P6 Ph. (418) 643-4046	Me Serge Carrier (418) 643-5393 Me Pierre Côté (418) 643-7914
24) Richelieu	46, Charlotte Sorel, J3P 1G3 Ph. (514) 742-2786	André Ménard L.-Robert Papillon (adj.)
25) Rimouski	183, de la Cathédrale C.P. 800 Rimouski, G5L 5J1 Ph. (418) 722-3531	Raymond Gallant Ghislain Boulanger (418) 723-2441
26) Roberval	a) 750, boul. St-Joseph Roberval, G8H 2L5 Ph. (418) 275-2666	Lucille Brassard Gérald Taillon (adj.)

COURT HOUSES AND REGISTRARS

DISTRICT	COURT HOUSE	Prothonotaries of the Superior court and registrars in divorce
	b) 725, Harvey ouest Suite R-C. 31 Alma, G8B 1P5 Ph. (418) 668-3334	Marcel Fortin Germain Naud (adj.)
27) Rouyn-Noranda	2, avenue du Palais Rouyn, J9X 2N9 Ph. (819) 764-6709	Nelson McLean
28) Saguenay	30, chemin de la Vallée La Malbaie, G0T 1J0 Ph. (418) 665-3991	Me Pierre Gaudreault Jacqueline Gaudreault
29) St-François	191, rue du Palais Sherbrooke, J1H 4R1 Ph. (819) 562-4784	Gérard Bessette Me Benoît Bachand
30) St-Hyacinthe	1550, Dessaulles St-Hyacinthe, J2S 2S8 Ph. (514) 773-8471	Michel Laroche (514) 774-3609 Alain Larocque
31) St-Maurice	a) 791, 5e Rue Shawinigan, G9N 6V6 Ph. (819) 536-2571	Michel-Noël Tremblay Simon Laliberté
	b) 556, rue Commerciale C.P. 7 La Tuque, G9X 3P1 Ph. (819) 523-9533	Lionel Fortin
32) Témiscamingue	8, St-Gabriel Nord Ville-Marie, J0Z 3W0 Ph. (819) 629-2773	Guy Chénier
33) Terrebonne	400, Laviolette St-Jérôme, J7Y 2T6 Ph. (514) 436-7721	Claude Boucher Jean Lemieux
34) Trois-Rivières	250, Laviolette Trois-Rivières, G9A 5H2 Ph. (819) 375-9668	Me Paul-Emile Marchand Me Daniel Kimpton

FAMILY DIVISION COUNSELLORS

DISTRICTS	COUNSELLORS
<ul style="list-style-type: none"> . Arthabaska . Drummond . St-Maurice . Trois-Rivières 	<p>Réal Charland C.P. 1330 3675, Chanoine Moreau Trois-Rivières, G9A 5L2 Ph. (819) 372-3131</p>
<ul style="list-style-type: none"> . Abitibi . Rouyn-Noranda . Témiscamingue 	<p>Armande St-Arnaud 282, lère Avenue est Amos, J9T 1H3 Ph. (819) 732-3244</p>
<ul style="list-style-type: none"> . Beauce . Kamouraska . Frontenac . Montmagny . Québec . Saguenay 	<p>Pierrette Brisson-Amyot 39, rue St-Louis Chambre 200 Québec, G1R 3Z2 Ph. (418) 643-8315</p>
<ul style="list-style-type: none"> . Hauterive . Mingan 	<p>Gabriel Hébert 768, rue Bossé Hauterive, G5C 1L6 Ph. (418) 589-2013</p>
<ul style="list-style-type: none"> . Gaspé . Bonaventure 	<p>Jean-Guy Audet C.P. 308 Bonaventure, G0C 1R0 Ph. (418) 534-2272</p>
<ul style="list-style-type: none"> . Rimouski 	<p>Guy Bélanger 103, rue Evêché est Rimouski, G5L 4H4 Ph. (418) 723-1250</p>
<ul style="list-style-type: none"> . Abitibi (Chibougamau) . Chicoutimi . Roberval 	<p>Fernand Tremblay 711, Jacques-Cartier Chicoutimi, G7H 5B7 Ph. (418) 549-4853</p>
<ul style="list-style-type: none"> . Montréal 	<p>Ulysse Desrosiers 1, rue Notre-Dame est Chambre 12.90 Montréal, H2Y 1B6 Ph. (514) 873-5868</p>

FAMILY DIVISION COUNSELLORS

DISTRICTS	COUNSELLORS
<ul style="list-style-type: none">. Hull. Labelle. Pontiac	Germain Vézina 105, boul. Sacré-Coeur Hull, J8X 3Y5 Ph. (819) 771-6631
<ul style="list-style-type: none">. Bedford. Richelieu. St-Hyacinthe. Iberville. Beauharnois	Lucien Lavalière 201, Place Charles-Lemoyne Longueuil, J4K 9Z9 Ph. (514) 651-1700
<ul style="list-style-type: none">. Joliette. Terrebonne	Centre des services sociaux Laurentide-Lanaudière 212, boul. Labelle Ste-Thérèse, J7E 4J2 Ph. (514) 430-6900
<ul style="list-style-type: none">. St-François	Marcel Bonneau 30, 13e Avenue nord Sherbrooke, J1E 2X5 Ph. (819) 564-7265

ENFORCEMENT OF FOREIGN CUSTODY ORDERS:

Enforced Under: The Divorce Act (R.S.C., 1970, c. D-8, s. 14 and 15)

The Act to Secure the Carrying out of the Entente between France and Quebec Respecting Mutual Aid in Judicial Matters (R.S.Q., c. A-20 1, Title VI (sec. 2) and VII)

For the application of the House Protection Act (R.S.Q., c. P-34.1), section 131 of the latter permits that foreign decisions relating to the custody of children be considered executory in Quebec.

Enforced By: Private practice lawyer who is assisted by the Central Authority of Quebec (Me Alice Mercier, Direction générale des affaires civiles et pénales, 1200, route de l'Eglise, Sainte-Foy (Québec) G1V 4M1, Ph. (418) 643-1441) where the foreign decision has been rendered in France.

Summary: Quebec has no statutory scheme, such as the Uniform Extra-Provincial Custody Orders Enforcement Act, to facilitate enforcement of foreign custody orders. Furthermore, where these orders are enforceable in Quebec, the parties do not have the benefit of a public service of enforcement, like in matters of maintenance orders, and must engage their own lawyer to enforce them by means of habeas corpus proceedings (sections 851 to 861 of the Code of Civil Procedure).

Tracing Unit:

There is no service at present for locating parties to custody orders. However, since about two years ago, we have provided a service to locate support debtors: it is the investigation service of the Department of Justice, 1200, route de l'Eglise, 6th floor, Sainte-Foy (Québec), G1V 4M1, Ph. (418) 643-4209.

Intra-Provincial Maintenance Orders:

Enforced Under: The Act to Promote the Payment of Support (S.Q., 1980, c.21).

Enforced by: The collectors of support payments who come under the Department of Justice and who are attached to the office of the prothonotary of the Superior court in each of the judicial districts.

Summary: Upon default of the debtor to pay the sums due pursuant to a judgment (rendered under the Civil Code of Lower Canada (old sections 200, 212, 213), the Civil Code of Quebec (new sections 534, 636, 637), the Code of Civil Procedure (new section 817) or the Divorce Act (sections 10, 11, 12), the person entitled to support may, without incurring costs, apply to a collector of support payments (in the district in which the judgment was rendered or in the district of his residence) for assistance in obtaining that payment. In his capacity as seizing creditor (s. 659.3 par. 1 of the Code of Civil Procedure), the collector of the district in which the judgment was rendered causes compulsory execution of the judgment according to the mode or modes of seizure he considers appropriate. The costs of the execution are payable by the debtor.

Intra-Provincial Custody Orders:

Enforced Under: The Code of Civil Procedure (R.S.Q., c. C-25, sections 851 to 861).

Enforced by: Private practice lawyers.

Summary: The Department of Justice in Quebec does not act to enforce intra-provincial custody orders. However, a Quebec resident can obtain the custody of his or her child, according to the appropriate custody order (rendered under the Civil Code of Lower Canada (old sections 200, 212, 213), the Civil Code of Quebec (new section 536.1 which applies in matters of separation from bed and board, new sections 548 and 569), the Code of Civil Procedure (New section 817) or the Divorce Act (sections 10, 11, 12), in taking habeas corpus proceedings against the person in breach of the custody order.

Legal Aid:

(a) For non-residents of Quebec

Under section 82 of the Regulation respecting the application of the Legal Aid Act (R.R.Q. 1981, c. A-14, r. 1), legal aid may be granted to out-of-province residents, if the government of their domicile or principal place of residence grants legal aid to Quebec residents.

(b) Services covered in Civil matters

Any economically underprivileged person can more easily have access to the courts, professional services of an advocate or a notary and necessary information concerning his rights and obligations (Legal Aid Act, R.S.Q., c. A-14, s. 1(c)). These services may be granted at any stage of the case before the court of original jurisdiction or in appeal, before any court and for any proceeding, contentious or not; it extends to proceedings in execution (Legal Aid Act, R.S.Q., c. A-14, s.10).

(c) Financial eligibility

"Means" test: an applicant who lacks sufficient means to assert a right, obtain legal counsel or retain the service of an advocate or notary without depriving himself of the means of subsistence (Legal Aid Act, R.S.Q., c. A-14, s.2) and whose weekly gross income is not higher than the standards prescribed by regulation ((1981) 113 G.O. 11, 5555) shall qualify for legal aid.

However, in the cases where an interprovincial reciprocity agreement applies to legal aid, the financial eligibility is determined in the petitioner's province of residence, pursuant to the criteria in effect in such province. To date all the provinces and territories of Canada have concluded such agreements with Quebec.

(d) Freedom of Choice

The legal aid system of Quebec is characterized essentially by the freedom of choice a recipient has between a lawyer employed full-time by the legal aid network and a lawyer in private practice whose services will be paid for by the network (regulation respecting the application of the Legal Aid Act (R.R.Q., 1981, c. A-14, r. 1, s. 76)

Contact: Me Jacques Valade
Commission des services juridiques
2, Complexe Desjardins
Tour de l'est, 14e étage
Montréal (Québec)
H5B 1B3 (514) 873-3562

CHILD PROTECTION AUTHORITY:

Enforced Under: Youth Protection Act, R.S.Q., c. P-34.1.

Enforced by: Many persons and bodies are involved, at different stages, in child protection cases. First of all, there is the "Comité de la protection de la jeunesse": this body is responsible to the Department of Justice. Also, directors of youth protection, who are answerable to the Department of Social Affairs, are appointed in every social service centre. Finally, the Act has established a Youth Court to hear the child protection cases.

Contact: Mrs. Micheline Leduc
Comité de la protection de la jeunesse
Ministère de la Justice
505, boulevard Dorchester ouest
14th floor
Montréal (Québec)
H2Z 1A8 1-800-361-8854

Mr. Paul Lavigueur
Ministère des Affaires sociales
6161, rue St-Denis, pièce 6
Montréal (Québec)
H2S 2R5 (514) 873-8144

Summary: The main functions of the Comité de la protection de la jeunesse are to ensure:

- (a) that protective measures are made available to the child whose security or development is endangered (s. 23(a));
- (b) the protection of the rights of the child which are recognized under the Act (s. 23(b)).

The director of youth protection discharges the duty to take charge of any child whose security or development is endangered or to whom an act contrary to any act or regulation in force in Quebec is imputed. As soon as he is seized of the situation of a child, he makes a summary assessment and determines whether or not immediate intervention is required. Where he is of opinion that the security or development of the child is in danger, he shall decide where the child is to be directed. In some cases, the decision concerning the directing of the child shall be taken jointly by the director and a person designated by the Minister of Justice.

Public Trustee or Official Guardian:

Enforced Under: Youth Protection Act, R.S.Q., c. P-34.1.

Enforced by: The directors of youth protection.

Contact: Mr. Paul Lavigueur
Ministère des Affaires sociales
6161, rue St-Denis, chambre 6
Montréal (Québec)
H2S 2R5 (514) 873-8144

Summary: A director may present to the Superior Court a motion to be appointed tutor of a child:

- (a) where the latter has been the subject of an order of the Youth Court and there is apparently no possibility of allowing his return to his parents without danger to him;
- (b) where the child is abandoned or forsaken or where he is an orphan, or where his parents do not fulfill the obligations of care, maintenance and education undertaken in respect of their child for the period during which he is subject to foster care.

Where the Superior court declares the father and mother totally deprived of parental authority, the director becomes tutor ex officio of the child if such child does not have a tutor appointed under the Civil Code

(section 249 and the following sections).
Where the Superior court declares the father
and mother partially deprived of parental
authority, it may appoint the director tutor
of the child if such child does not have a
tutor appointed under the Civil Code.

All Matters Relating to Family Law:

Ms. Marie-Josée Longtin
Directrice de la législation ministérielle
1200, route de l'Eglise, 4e étage
Sainte-Foy (Québec)
G1V 4M1 (418) 643-7222

International Reciprocity Agreements:

All provinces and territories of Canada;
France.

CHAPTER 8: NEW BRUNSWICK

Reciprocal Enforcement of Maintenance Orders:

Enforced Under: Reciprocal Enforcement of Maintenance Orders Act (adjunctive law)

Divorce rule (Rule 72, Rules of Court, 1982)
or Child and Family Services and Family Relations Act (substantive law)

Enforced By: Office of the Attorney General
P.O. Box 6000
Fredericton, N.B.
E3B 5H1

Contact: Mr. A.M. DiGiacinto, Deputy Registrar
Registrar's Office
Room 202, Justice Building
P.O. Box 6000
Fredericton, N.B.
E3B 5H1 (506) 453-2508

Summary: The Office of the Attorney General provides the services of Crown Prosecutors at no cost to the applicant for the obtaining of provisional orders and the enforcement of final orders.

Duty Counsel is available for the Respondent in the Unified Family Court in Fredericton. Civil Legal Aid has been implemented and covers representation for the Respondent if qualified for assistance.

Remedies differ slightly under the Federal and Provincial enforcement procedures but both allow show cause hearings, garnishment, orders against property and imprisonment for contempt.

Court Houses and Registrars:

- 1) A.M. DiGiacinto
Deputy Registrar
Registrar's Office
Room 202 - Justice Bldg. (Central Office)
P.O. Box 6000
Fredericton, N.B.

- 2) Mr. Gary W. Demmings
Administrative Services Officer
Provincial Court - Family Division
P.O. Box 5001
Moncton, New Brunswick
E2A 3Z9
- 3) Mr. André Lépine
Director
Provincial Court - Family Division
P.O. Box 5001
Bathurst, New Brunswick
E2A 3Z9
- 4) Ms. Catherine Wilson
Enforcement Officer
Provincial Court - Family Division
P.O. Box 6398, Station "A"
Saint John, New Brunswick
E2L 4R8
- 5) Mr. Robert I. Ross
Court Counsellor
Provincial Court - Family Division
454 King George Highway
Newcastle, New Brunswick
E1V 1M1
- 6) Miss M.C. Cameron
Court Stenographer
P.O. Box 1329
Woodstock, New Brunswick
E0J 2B0
- 7) Mr. Marcel Pelletier
Provincial Court - Family Division
P.O. Box 5001
Edmundston, New Brunswick
E3V 1J9
- 8) Ms. Ida MacDonald
Provincial Court -
Family Division
City Centre Building
157 Water Street - Room 309
Campbellton, New Brunswick
E3N 3H5

- 9) Miss Janet McIntosh
Administrator - Family Court
P.O. Box 6000
Fredericton, New Brunswick
E3B 5H1
- 10) Provincial Court - Family Division
P.O. Box 806
Tracadie, New Brunswick
E0C 2B0

Family Court Counsellors:

Counselling Services
Provincial Court - Family Division
Court of Queen's Bench, Family Division
Province of New Brunswick

Also consult the following list of counsellors.

<u>NAME/NOM</u>	<u>OFFICE/BUREAU</u>	<u>RESIDENCE</u>	<u>SATELLITE OFFICE(S) BUREAU(X) SATELLITE(S)</u>
Ronald Eric Bagnell	Court of Queen's Bench Family Division Room 207 Justice Bldg. Queen Street Fredericton, New Brunswick E3B 5H1 Telephone: 453-2015 453-2990 Secretary: Judy Gregory	Beaverdam R.R.#5 Fredericton, New Brunswick Telephone: 455-6932 (Party Line)	Provincial Court Drummond Drive School Oromocto, N.B. Contact Person: Donald Kenny Court Clerk
Barbara-Ann Bourque	Cour Provinciale Division de la famille Place Assomption 3e étage C.P. 5001 770, rue Main Moncton, N.B. E1C 8R3 Tel: 858-2710 Sec.: Carol Daigle	720 Gauvin Rd Dieppe, N.B. E1A 1M1 Téléphone: 855-2575	Richibucto Court House Main Street Richibucto, N.B. Tel: 523-9883 Shediac Mall 2nd Floor Shediac, N.B. Tel: 532-4364 532-6251 Bouctouche Court House Irving Boulevard Bouctouche, N.B. Tel: 743-6392
Michael Guravich	Provincial Court Family Division Assumption Place 770 Main Street 3rd Fl, PO Box 5001 Moncton, N.B. E1C 8R3 Tel: 858-2710 Sec.: Carol Daigle	300 Ryan Rd. R.R.#7 Moncton, N.B. E1C 8X4 Tel: 384-9671	Court House Sackville, N.B.

<u>NAME/NOM</u>	<u>OFFICE/BUREAU</u>	<u>RESIDENCE</u>	<u>SATELLITE OFFICE(S)</u> <u>BUREAU(X) SATELLITE(S)</u>
Martina Riordon	Provincial Court Family Division P.O. Box 6398 110 Charlotte St. Saint John, N.B. E2L 2J4 Tel: 658-2400 Sec: Helen Doucet Cathy McCracken	400 Douglas Ave Apt. #304 Saint John, New Brunswick E2A 3Y5 Tel: 693-1242	Department of Social Services Main Street Sussex, N.B. Tel: 433-3053 Sec: Sally Folkins
Emile Robichaud	Cour Provinciale, Division de la famille C.P. 5001 Bathurst, N.B. E2A 3Z9 Tel: 548-8831 Sec: Mme Anne-Marie Bryar	C.P. 291 Robertville, N.B. E0B 2K0 Tél: 783-4816	City Centre C.P. 5001 Campbellton, N.B. Tél: 759-9363 Sec: Mme Ida MacDonald
Robert I. Ross	Provincial Court Family Division 454 King George Hwy. Tel: 622-0849 Sec: Deborah Ferguson	511 Manny Drive Newcastle, N.B. E1V 3S3 Tel: 622-7677	
Marie Warner	Provincial Court Family Division P.O. Box 6398 110 Charlotte St. Saint John, N.B. E1V 1M1	140 Broad St. Saint John, New Brunswick E2C 1Y8 Tel: 642-1741	Provincial Bldg. Provincial Court Family Division P.O. Box 246 41 King Street St. Stephen, N.B. E3L 2X2 Tel: 466-1700 Sec: Judy Frye
Louis J. Richard Directeur Services de Counselling à la Cour familiale	Cour provinciale Division de la famille Place Assomption 770, rue Main 3e étage, C.P. 5001 Moncton, N.B. E1C 8R3 Tél: 858-2710 Sec: Carol Daigle	17, avenue Bromley Moncton, N.B. E1C 5T8 Tél: 382-4663	

Enforcement of Foreign Custody Orders:

Enforced Under: The Child and Family Services and Family Relations Act

Enforced By: The Office of the Attorney General, through the services of Crown Prosecutors.

Summary: Section 130.2 to section 130.6 of the Child and Family Services and Family Relations Act provides the procedure for enforcement of extra-provincial custody orders. It is desirable to include with the application a certified copy of the order and an affidavit of the custodial parent.

Tracing Unit:

No specific agency is designated for this purpose. However, s. 122(1) allows the court to order any person or public (provincial) agency to provide the court with the address that is contained in the records in its custody if the purpose of the application is to request an order or to enforce an existing order for custody or maintenance and the applicant needs to learn or confirm the whereabouts of the respondent.

Intra-Provincial Maintenance Orders:

Enforced Under: The Child and Family Services and Family Relations Act.

Enforced By: The Office of the Attorney General, through the services of Crown Prosecutors.

Summary: The respondent can choose to be represented by duty counsel in all cases, civil legal aid if he/she qualifies for financial assistance or by privately retained counsel.

Intra-Provincial Custody Orders:

Enforced Under: The Child and Family Services and Family Relations Act.

Enforced By: Private counsel.

Summary: The office of the Attorney-General does not act to obtain or enforce custody orders involving New Brunswick residents.

Legal Aid:

New Brunswick has a full civil legal aid program. Contact:

Mr. Edward F. McGinley
Provincial Director
Legal Aid
P.O. Box 600
Fredericton, New Brunswick
E3B 5H1 (506) 455-9976

Child Protection:

Enforced Under: The Child and Family Services and Family Relations Act.

Enforced By: Department of Social Services

Contact: Mr. Robert MacDonald
Executive Director
Personal Social Services
Department of Social Services
P.O. Box 6000
Fredericton, N.B. (506) 453-2955

Summary: The office of the Attorney General provides the Minister of Social Services the counsel of Crown Prosecutors to present applications on behalf of the Minister.

Public Trustee or Official Guardian:

The Minister of Social Services shall act as the legal representative of any child of whom he is the guardian under the Child and Family Services and Family Relations Act and may act as the legal representative of any other child in care. (s. 4(1)).

In any proceeding with respect to the custody of a child, if the Minister is not a party to the proceeding, the court shall advise the Minister of the proceeding and he may take whatever steps he considers necessary to ensure that the interests and concerns of the child are properly represented separate from those of any other person, including the appointment of counsel or a responsible spokesman to assist in the representation of the interests and concerns of the child. (s. 7(a)).

All inquiries should be directed to:

Mr. Robert MacDonald
Executive Director
Personal Social Services
Department of Social Services
P.O. Box 6000
Fredericton, N.B. (506) 453-2955

All matters relating to legal services in family law:

Mr. Robert A. Murray
Director of Public Prosecutions
Office of the Attorney General
P.O. Box 6000
Fredericton, N.B.
E3B 5H1 (506) 453-2784

International Reciprocity Agreements:

Excerpt from New Brunswick Regulation 82-936

Under section 11 of the Reciprocal Enforcement of Maintenance Orders Act, the Lieutenant-Governor in Council makes the following order:

1. This Order may be cited as the Reciprocating States Order - Reciprocal Enforcement of Maintenance Orders Act.
2. The following are declared to be reciprocating States for the purposes of the Act:
 - (a) Alberta;
 - (b) British Columbia;
 - (c) Manitoba;
 - (d) Newfoundland;
 - (e) Northwest Territories;
 - (f) Nova Scotia;
 - (g) Ontario;
 - (h) Prince Edward Island;
 - (i) Quebec;
 - (j) Saskatchewan;
 - (k) Yukon Territory;
 - (l) the following States and Territories of Australia:
 - (i) New South Wales;
 - (ii) Victoria;
 - (iii) South Australia;
 - (iv) Western Australia;
 - (v) Tasmania; and
 - (vi) Queensland;

- (m) England;
- (n) Fiji;
- (o) Isle of Man;
- (p) New Zealand;
- (q) Northern Ireland;
- (r) Scotland;
- (s) Singapore; and
- (t) the following states of the United States of America:
 - (i) California;
 - (ii) Maine;
 - (iii) Connecticut;
 - (iv) Delaware;
 - (v) North Carolina;
 - (vi) Oregon;
 - (vii) Montana;
 - (viii) Massachusetts;
 - (ix) Maryland; and
 - (x) New York.

CHAPTER 9: NOVA SCOTIA

Reciprocal Enforcement of Maintenance Orders

Enforced Under: Maintenance Orders Enforcement Act
Divorce Act
Civil Procedure Rules

Enforced By: Department of Attorney General
P.O. Box 7, 1723 Hollis Street
Halifax, Nova Scotia
B3J 2L6

Family Courts of Nova Scotia

Contact: R. Gerald Conrad, Q.C.
Director (Civil)
Department of Attorney General
(as above) 424-4041

Mrs. Brenda Croft
Assistant Administrator
Department of Attorney General
(as above) 424-4041

Mr. William D. Greatorex
Administrator
Family Children's Services Division
Department of Social Services
P.O. Box 696
Halifax, N.S.
B3J 2T7 424-4279

Summary: On the request of a reciprocal jurisdiction,
the Attorney General will arrange through the
Family courts for the enforcement of foreign
maintenance orders. Maintenance orders are
generally enforced by use of garnishment and
execution under the Family Maintenance Act,
S.N.S. 1980, c.6.

Court Houses and Clerks:

Cape Breton Region, Sydney
(Victoria & Cape Breton Counties)

Mr. Peter MacDonald
Supervisor
Family Court
P.O. Box 785
Sydney, N.S.
B1P 6J1

Attention: Mr. Lloyd Lewis
Mr. Terry Mosley

Cape Breton Region, Port Hawkesbury
(Richmond and Inverness Counties)

Mr. Gordon MacMaster
District Supervisor
Family Court
P.O. Box 359
Port Hawkesbury, N.S.
BOE 2V0

Attention: Mr. Walter
MacMillan

Halifax

(City of Halifax and Halifax County and Hants County)

Mr. Jack Jackson
Supervisor
Family Court
6112 Quinpool Road
Halifax, N.S.
B3K 5H7

Attention: Mr. Len W. Lipsett

Dartmouth

(City of Dartmouth and Halifax County)

Mr. Jack Jackson
Supervisor
Family Court
45 Alderney Drive
Dartmouth, N.S.
B2Y 4B9

Attention: Mr. Alvin
Underhill

Central Region

(Lunenburg, Kings, Queens and Annapolis Counties)

Mr. Vernon Totten
Casework Supervisor
Family Court
P.O. Box 816
Kentville, N.S.
B4N 4H8

Attention: Mr. Barry J.
Lavellee
Mr. Perry Bishop

North Shore Region

(Cumberland County)

Mr. Don Russell
District Supervisor
Family Court
P.O. Box 399
Amherst, N.S.
B4H 3Z5

Attention: Mr. Archie St.
Peters

North Shore Region

(Pictou, Antigonish, Guysborough and Colchester Counties)

Mr. J. T. MacIsaac
Casework Supervisor
Family Court
P.O. Box 488
New Glasgow, N.S.
B2H 5E5

Attention: Mr. Elliott
MacKinnon
Mr. Norman Lord

Western Region

(Yarmouth, Shelburne and Digby Counties)

Mr. Douglas Mosley
Casework Supervisor
Family Court
P.O. Box 460
Yarmouth, N.S.
B5A 4B4

Attention: Mr. Robert LeBlanc

Enforcement of Foreign Custody Orders:

Enforced Under: Reciprocal Enforcement of Custody Orders Act
S.N.S. 1976, c.15

Enforced By: Private Solicitor

Summary: Nova Scotia does not become involved in the enforcement of foreign custody orders except where the matter falls within the Criminal Code sections regarding child abduction. A person wishing to pursue enforcement of his custody order in Nova Scotia should engage private counsel.

Tracing Unit:

No specific tracing facilities are available in Nova Scotia in maintenance or custody order matters beyond the usual resort to the Sheriff's office for service of process.

Intra-provincial Maintenance Orders:

Enforced Under: The Family Maintenance Act

Enforced By: Private Solicitor

Summary: The Nova Scotia Attorney General's Department does not act for Nova Scotia residents in obtaining or enforcing maintenance orders involving other Nova Scotia residents. This is a matter which the parties must pursue by the use of private counsel or Legal Aid.

Intra-provincial Custody Orders:

Enforced Under: The Infants' Custody Act R.S.N.S. 1967,
c.145
The Family Maintenance Act
The Children Services Act
S.N.S. 1976, c.8

Enforced By: Private Solicitor

Summary: The Department of the Attorney General in Nova Scotia does not act to obtain or enforce custody orders involving Nova Scotia residents, and such residents must obtain their own counsel.

Child Protection Authority:

Enforced Under: Children Services Act

Enforced by: Department of Social Services
P.O. Box 696
Halifax, N.S.
B3J 2T7

Contact: Mr. William D. Greatorex
Administrator
Family & Children's Services Division
(as above) 424-4279

Summary: The Department of the Attorney General or fee-for-service agents act for the Department of Social Services in child protection cases and the Children Services Act does make provision for the enforcement of extra-provincial wardship orders.

All Matters Relating to Family Law:

Ms. Alison Scott
Solicitor
Department of Attorney General
P.O. Box 7, Halifax, N.S.
B3J 2L6 424-7701

International Reciprocity Agreements:

Isle of Man
New South Wales
Victoria, Australia
Tasmania
Guernsey, Bailiwick of Island
Southern Rhodesia
Australian Capital Territory & Northern Territory
Papua & New Guinea
Western Australia
Singapore
South Australia
The United Kingdom
Gibraltar

CHAPTER 10: PRINCE EDWARD ISLAND

Reciprocal Enforcement of Maintenance Orders:

Enforced Under: Reciprocal Enforcement of Maintenance
Orders Act
Divorce Act
Rules of Court

Enforced By: Department of Attorney General
Post Office Box 2000
Charlottetown
Prince Edward Island
C1A 7N8

Contact: Deborah J. Proud
Family Division, Supreme Court
Post Office Box 2290
Charlottetown
Prince Edward Island
C1A 8C1 892-9131

J. Philip Arbing
Department of Justice
Post Office Box 2000
Charlottetown
Prince Edward Island
C1A 7N8 892-5411

Summary: On the request of a reciprocal jurisdiction,
administrative court staff will supervise the
enforcement of foreign maintenance orders and
will attend Supreme Court to see to the
enforcement thereof.

Maintenance orders are generally enforced by
use of garnishment execution registration
against land, show cause hearings and
contempt proceedings.

Court Houses and Registrars

Deborah Proud
Supreme Court (Family Division)
Post Office Box 2290
42 Water Street
Charlottetown, Prince Edward Island
C1A 8C1 (902) 892-9131

Wayne Lilly
Deputy Prothonotary
Supreme Court
Court House Building
108 Central Street
Summerside, Prince Edward Island
(902) 436-4217

Family Court Counsellors:

Irene MacInnis (Mrs.)
Supervising Family Counsellor
Supreme Court (Family Division)
Post Office Box 2290
42 Water Street
Charlottetown, Prince Edward Island
C1A 8C1 (902) 892-9131

Francis P. Bulger
Family Counsellor
Supreme Court (Family Division)
Post Office Box 2290
42 Water Street
Charlottetown, Prince Edward Island
C1A 8C1 (902) 892-9131

Frank Lavandier
Family Counsellor
Supreme Court (Family Division)
Court House Building
108 Central Street
Summerside, Prince Edward Island
(902) 436-4217

Enforcement of Foreign Custody Orders:

Enforced Under: Extra-Provincial Custody Order Enforcement Act
Divorce Act

Enforced By: Private Solicitor

Summary: Prince Edward Island does not become involved in the enforcement of foreign custody orders except where the matter falls within the Criminal Code sections regarding child abduction. A person wishing to pursue enforcement of his custody order in Prince Edward Island should engage private counsel.

Tracing Unit:

No specific tracing facilities are available in Prince Edward Island in maintenance or custody order matters beyond the usual resort to the Sheriff's office for service of process. Due to our small geographic size and population, tracing does not present a problem.

Intra-Provincial Maintenance Orders:

Enforced Under: Family Law Reform Act

Enforced By: Administrative Court staff.

Summary: Automatic enforcement

Intra-Provincial Custody Orders:

Enforced Under: Family Law Reform Act
Divorce Act

Enforced By: Private Solicitor

Summary: The Department of the Attorney General in Prince Edward Island does not act to obtain or enforce custody orders involving Prince Edward Island residents, and such residents must obtain their own counsel, through the private bar or public defender system.

Legal Aid:

Public Defender system in force which handles criminal and family matters.

Child Protection Authority:

Enforced Under: Family and Child Services Act

Enforced By: Department of Social Services
Post Office Box 2000
Charlottetown
Prince Edward Island
C1A 7N8

Contact: Nancy E. MacKinnon
Director of Child Welfare
Department of Social Services
Post Office Box 2000
Charlottetown
Prince Edward Island
C1A 7N8

902-892-5471

or

Judith M. M. Haldemann
Departmental Solicitor
Department of Justice
Post Office Box 2000
Charlottetown
Prince Edward Island
C1A 7N8

902-892-5411

Summary:

The Department of the Attorney General or fee-for-service agents act for the Department of Social Services in child protection cases and the Family and Child Services Act does make provision for the enforcement of extra-provincial wardship orders.

All Matters Relating to Family Law:

George E. MacMillan
Prothonotary
Supreme Court of
Prince Edward Island
Post Office Box 2200
Charlottetown
Prince Edward Island
C1A 8B9

(902) 892-9131

International Reciprocity Agreements

All provinces and territories of Canada
All states of Australia
England and Northern Ireland
Scotland
Guernsey
Isle of Man
Malta
New Zealand
Zimbabwe

CHAPTER 11: NEWFOUNDLAND

Reciprocal Enforcement of Maintenance Orders

Enforced Under: Maintenance Orders Enforcement Act, Divorce Act, and Divorce Rules (Supreme Court)

Enforced By: Department of Justice
Confederation Building
St. John's, Newfoundland
A1C 5T7

Contact: Mrs. E.P. Noonan
Solicitor
Civil Division
Department of Justice
Confederation Building
St. John's, Newfoundland
A1C 5T7 (709) 737-2887

Summary: On the request of a reciprocal jurisdiction, the transmission of foreign maintenance order and supporting documents will be facilitated to the appropriate local courts for enforcement.

Maintenance orders are generally enforced by use of garnishment, execution, registration against land (Judicature Act), and show cause hearings.

Court Houses and Registrars:

Provincial Court of Newfoundland
P.O. Box 126
Clareville, Newfoundland
A0E 1J0

Provincial Court of Newfoundland
P.O. Box 2006
Corner Brook, Newfoundland
A2H 6C3

Provincial Court of Newfoundland
P.O. Box 307
Gander, Newfoundland
A1V 1W7

Provincial Court of Newfoundland
P.O. Box 217
Goose Bay, Labrador
A0P 1C0

Provincial Court of Newfoundland
Grand Bank, Newfoundland
A0E 1W0

Provincial Court of Newfoundland
Provincial Building
Grand Falls, Newfoundland
A2A 1W0

Provincial Court of Newfoundland
P.O. Box 519
Harbour Grace, Newfoundland
A0A 2M0

Provincial Court of Newfoundland
P.O. Box 149
Holyrood, Newfoundland
A0A 2R0

Provincial Court of Newfoundland
P.O. Box 369
Placentia, Newfoundland
A0B 2Y0

Provincial Court of Newfoundland
P.O. Box 940
Port aux Basques, Newfoundland
A0M 1C0

Provincial Court of Newfoundland
P.O. Box 68
Springdale, Newfoundland
A0J 1T0

Provincial Court of Newfoundland
P.O. Box 279
Stephenville, Newfoundland
A2N 2S4

Provincial Court of Newfoundland
P.O. Box 1060
Wabush, Labrador
A0R 1B0

Provincial Court of Newfoundland
Woody Point, Bonne Bay
Newfoundland
A0K 1P0

Unified Family Court
21 King's Bridge Road
St. John's, Newfoundland
A1C 3K4
Mrs. Carol O'Brien
Court Administrator

Supreme Court of Newfoundland
Court House
Duckworth Street
St. John's, Newfoundland
Mr. Edward Neary, Q.C.
Registrar

Family Court Counsellors:

Available only at the Unified Family Court
21 King's Bridge Road
St. John's, Newfoundland
A1C 3K4

Mr. Rick Morris
Ms. Kathy LeGrow
Mr. Brendan Rumsey

Enforcement of Foreign Custody Orders:

Enforced Under: Extra-Provincial Custody Order Enforcement Act, Divorce Act

Enforced By: Private Solicitor

Summary: Newfoundland does not become involved in the enforcement of foreign custody orders except where the matter falls within the Criminal Code sections regarding child abduction. A person wishing to pursue enforcement of his custody order in Newfoundland should engage private counsel.

Tracing Unit:

No specific tracing facilities are available in Newfoundland in maintenance or custody order matters beyond the usual

resort to the Sheriff's Office for service of process.

Intra-Provincial Maintenance Orders:

Enforced Under: The Maintenance Act
The Children of Unmarried Parents Act

Enforced By: Private Solicitor

Summary: The Newfoundland Department of Justice does not act for Newfoundland residents in obtaining or enforcing maintenance orders involving other Newfoundland residents. This is a matter which the parties must pursue by the use of private counsel or Legal Aid.

Intra-Provincial Custody Orders:

Enforced Under: Divorce Act

Enforced By: Private Solicitor

Summary: The Department of Justice in Newfoundland does not act to obtain or enforce custody orders involving Newfoundland residents, and such residents must obtain their own counsel.

Legal Aid:

Newfoundland Legal Aid Commission
Centre Building
21 Church Hill
St. John's, Newfoundland
A1C 3Z1

Newfoundland Legal Aid Commission
50 Main Street
Corner Brook, Newfoundland
A2H 1C4

Newfoundland Legal Aid Commission
John Lloyd Building
Gander, Newfoundland

Newfoundland Legal Aid Commission
50 High Street
Grand Falls, Newfoundland
A2A 1C6

Newfoundland Legal Aid Commission
P.O. Box 442
Hamilton River Road
Happy Valley, Labrador
A0P 1E0

Newfoundland Legal Aid Commission
P.O. Box 474
Ville Marie Drive
Marystown, Newfoundland
A0E 2N0

Newfoundland Legal Aid Commission
94-A Queens Street
Stephenville, Newfoundland
A2N 2M9

Child Protection Authority:

Enforced Under: The Child Welfare Act

Enforced By: Department of Social Services
Chimo Building
Crosbie Road
St. John's, Newfoundland (709) 737-2668

Contact: Mrs. E.P. Noonan
Solicitor
Department of Justice
Confederation Building
St. John's, Newfoundland
A1C 5T7 (709) 737-2887

Summary: The Department of Justice acts for the
Department of Social Services in child
protection cases.

Public Trustee or Official Guardian:

The Government of Newfoundland and Labrador
does not at present have a Public Trustee or
Official Guardian to work in custody and
maintenance matters involving children. The
Registrar of the Supreme Court of
Newfoundland protects the interests of
children in estate and related matters.

All Matters Relating to Family Law:

Mrs. E.P. Noonan
Solicitor
Department of Justice
Confederation Building
St. John's, Newfoundland
A1C 5T7 (709) 737-2887

International Reciprocity Agreements:

U.S.A. States:

California
Maryland
North Carolina
Wisconsin

Others:

Australian Capital Territory
England and Northern Ireland
Guernsey
Isle of Man
Jersey
Malta
Northern Territory of Australia
New Guinea
New South Wales
New Zealand
Papua
Queensland
Republic of Singapore
South Australia
Tasmania
Victoria
Western Australia
Zimbabwe

CHAPTER 12: NORTH WEST TERRITORIES

Reciprocal Enforcement of Maintenance Orders

Enforced Under: Maintenance Orders (Facilities for Enforcement) Ordinance, Maintenance Orders Enforcement Ordinance

Enforced By: Legal Division
Department of Justice & Public Services
Government of the Northwest Territories
Yellowknife, N.W.T.
X1A 2L9

Contact: William J. Wilkins
Legal Counsel
Legal Division
Department of Justice & Public Services
(as above)
(403) 873-7465

Summary: On the request of a reciprocal jurisdiction, solicitors of the Legal Services Division will supervise the enforcement of foreign maintenance orders and will attend in court - to see to the enforcement thereof. Maintenance orders are generally enforced by use of garnishment and show cause hearings.

Intra-provincial Maintenance Orders:

Enforced Under: Maintenance Orders (Enforcement for Enforcement) Ordinance, Maintenance Orders Enforcement Ordinance

Enforced By: Private Solicitor

Summary: The Northwest Territories' Department of Justice and Public Services does not act for Territorial residents in obtaining or enforcing maintenance orders involving other Territorial residents. This is a matter which the parties must pursue by the use of private counsel or Legal Aid.

Intra-Provincial Custody Orders:

Enforced Under: Infants Act
Divorce Act

Enforced By: Private Solicitor

Summary: The Northwest Territories' Department of Justice and Public Services does not act to obtain or enforce custody orders involving Territorial residents, and such residents must obtain their own counsel.

International Reciprocity Agreements:

U.S.A. States

California
Maryland
Massachusetts
New Jersey
New York State
South Dakota
Virginia

Others

Bailiwick of Guernsey
Barbados
England
Isle of Man
Jersey
Malta
New Zealand including Cook Islands
Northern Ireland
Republic of South Africa
Rhodesia
Singapore

Child Protection Authority:

Enforced Under: Child Welfare Ordinance

Enforced By: Department of Social Services
Government of the Northwest Territories
Yellowknife, N.W.T.
X1A 2L9

Contact: Diane Doyle
Superintendent of Child Welfare .
(as above) (403) 873-7312

Public Trustee or Official Guardian:

Enforced Under: Public Trustee Ordinance

Enforced By: Public Trustee Office
Department of Justice & Public Services
Government of the Northwest Territories
Yellowknife, N.W.T.
X1A 2L9

Contact: Elsie Bagan
Public Trustee Officer
(as above) (403) 873-7464

Joel W. Fournier
Public Trustee
(as above) (403) 873-7437

Summary: The Public Trustee acts for the estate of
some deceased in estate matters, and acts for
children in some circumstances involving
estates and looks after the estates of
children who are wards of the court but does
not take part in maintenance matters
involving children.

Legal Aid:

Legal Services Board
Department of Justice & Public
Services
Government of the Northwest Territories
Yellowknife, N.W.T.
X1A 2L9

Executive Director
Administrative Assistant

William Douglas Miller
Marjorie Eschak

Court Houses and Registrars

Court House, Yellowknife

Local Registrar A. Milton
(873-7643)

Court House, Hay River

Local Registrar C. Mains
(874-6509)

Tracing Unit:

No specific tracing facilities are available in the N.W.T. in maintenance or custody order matters beyond the usual resort of the Sheriff's office for service of process.

Enforcement of Foreign Custody Orders:

Enforced Under: Extra-Provincial Custody Orders Enforcement Act
Divorce Act

Enforced By: Private Solicitors

Summary: The Government of N.W.T. does not become involved in the enforcement of foreign custody orders. A person wishing to pursue enforcement of his custody order in the N.W.T. should engage private counsel.

CHAPTER 13: YUKON TERRITORY

Reciprocal Enforcement of Maintenance Orders

Enforced Under: Reciprocal Enforcement of Maintenance Orders Ordinance
Divorce Ordinance
Matrimonial Property and Family Support Ordinance

Enforced By: Department of Justice
Government of Yukon
Box 2703
Whitehorse, Yukon
Y1A 2C6

Contact: T.F. Duncan
Acting Deputy Minister of Justice
Government of Yukon
Box 2703
Whitehorse, Yukon
Y1A 2C6

Summary: On the request of a reciprocating jurisdiction, government lawyers will assist in registering orders from other jurisdictions and the obtaining of final orders in respect of provisional orders obtained elsewhere or the enforcement of final Reciprocal Enforcement Maintenance Orders or Divorce Orders in Territorial Court.

Maintenance orders are generally enforced by use of garnishment, execution, registration against land, show cause hearings and contempt proceedings.

Court Houses and Registrars

James R. Simpson
Clerk of Territorial Court
Department of Justice
Government of Yukon
Box 2703
Whitehorse, Yukon
Y1A 2C6

667-5437

A.A. Schmidt
Clerk of the Supreme Court
Government of Yukon
Box 2703
Whitehorse, Yukon
Y1A 2C6

667-4431

Intra-Provincial Custody Orders:

Enforced Under: Divorce Act

Proposed Children's legislation
International Child Abduction Act (shortly
to be re-enacted as part of new Children's
legislation).

Enforced by: Private Solicitor

Summary: The Department of Justice in Yukon does not act to obtain or enforce custody orders involving Yukon residents and such residents must obtain their own counsel through the private bar. Legal Aid may be arranged in appropriate cases by agreement between the Legal Aid authorities of the jurisdiction in which the custodial parent is resident and Yukon Legal Aid.

Enforcement of Foreign Custody Orders:

Enforced Under: International Child Abduction Act

(shortly to be re-enacted as part of the new
Children's legislation).

Enforced by: Private solicitor

Summary: Yukon does not become involved in the enforcement of foreign custody orders except where the matter falls within the Criminal Code sections regarding child abduction. A person wishing to pursue enforcement of his custody order in the Yukon should engage private counsel.

Tracing Unit:

No specific tracing facilities are available in the Yukon to enforce maintenance or custody orders beyond the service of process by the Sheriff's office or the RCMP.

Intra-Provincial Maintenance Orders:

Enforced Under: Matrimonial Property and Family Support Act

Enforced by: Government Lawyers

Summary: There is no automatic monitoring of these orders although discussions for such a plan are taking place.

Legal Aid:

Cases approved by Legal Aid Committee are handled by local lawyers.

Child Protection Authority:

Enforced Under: Child Welfare Act
(To be replaced shortly by the new Children's legislation).

Enforced by: Department of Health and Human Resources
Government of Yukon
Box 2703
Whitehorse, Yukon
Y1A 2C6 (403) 667-5674

Contact: Ross Findlater
Director of Child Welfare
Government of Yukon
Department of Health & Human Resources
Box 2703
Whitehorse, Yukon
Y1A 2C6 (403) 667-5689

Summary: The Department of Justice acts for the Department of Health & Human Resources. The Child Welfare Act makes provision for the reciprocal recognition of Child Protection Orders.

All Matters Relating to Family Law:

F.F. Duncan
Acting Deputy Minister of Justice
Government of Yukon
Box 2703
Whitehorse, Y.T.

Alastair Bissett-Johnson
Coordinator,
Juvenile and Family Law Reform
Department of Justice
Government of Yukon
Box 2703
Whitehorse, Y.T.

UNITED STATES

NATIONAL CHILD SUPPORT DIRECTORY

CHAPTER 14: UNITED STATES NATIONAL CHILD SUPPORT DIRECTORY

ALABAMA

STATE PARENT LOCATOR SERVICE

Bureau of Public Assistance
Department of Pensions & Security
64 North Union Street
Montgomery, Alabama 36130
Telephone: (205) 832-6561

IV-D AGENCY

Bureau of Public Assistance
Department of Pensions & Security
64 North Union Street
Montgomery, Alabama 36130
Telephone: (205) 832-6561

URESA STATE INFORMATION AGENT

John A. Parrish, Director
Bureau of Public Assistance
Department of Pensions & Security
64 North Union Street
Montgomery, Alabama 36130
Telephone: (205) 832-6561

ALASKA

STATE PARENT LOCATOR SERVICE

Child Support Enforcement Agency
Department of Revenue
201 E. 9th Avenue, #202
Mail Stop 01
Anchorage, Alaska 99501
Telephone: (907) 276-3441, Ext.65

IV-D AGENCY

Child Support Enforcement Agency
Department of Revenue
201 E. 9th Avenue, #202
Anchorage, Alaska 99501
Telephone: (907) 276-3441

URESA STATE INFORMATION AGENT

Fred D. Smith, Enforcement Officer
Child Support Enforcement Agency
Department of Revenue
201 E. 9th Avenue, #202
Anchorage, Alaska 99501
Telephone: (907) 276-3441

AMERICAN SAMOA

STATE PARENT LOCATOR SERVICE

Office of the Attorney General
P.O. Box 7
Pago Pago, American Samoa 96799
Telephone: 633-4163

IV-D AGENCY

Office of the Attorney General
P.O. Box 7
Pago Pago, American Samoa 96799
Telephone: 633-4163

URESA STATE INFORMATION AGENT

F.V. Vaovasa
Assistant Attorney General
Office of the Attorney General
P.O. Box 7
Pago Pago, American Samoa 96799
Telephone: 633-4163

ARIZONA

STATE PARENT LOCATOR SERVICE

Child Support Enforcement Section
Department of Economic Security
P.O. Box 6123
Phoenix, Arizona 85005
Telephone: (602) 255-4759

IV-D AGENCY

Child Support Enforcement Section
Department of Economic Security
P.O. Box 6123
Phoenix, Arizona 85005
Telephone: (602) 255-4759

URESA STATE INFORMATION AGENT

Robert K. Corbin, Manager
Child Support Enforcement Section
Department of Economic Security
P.O. Box 6123
Phoenix, Arizona 85005
Telephone: (602) 255-4759

ARKANSAS

STATE PARENT LOCATOR SERVICE

Child Support Enforcement Unit
Arkansas Social Services Division
P.O. Box 3358
Little Rock, Arkansas 72203
Telephone: (501) 371-1614

IV-D AGENCY

Child Support Enforcement Unit
Arkansas Social Services Division
P.O. Box 3358
Little Rock, Arkansas 72203
Telephone: (501) 371-1614

URESA STATE INFORMATION AGENT

Ivan H. Smith
Director of Legal Services
Arkansas Social Services Division
P.O. Box 1437
Little Rock, Arkansas 72203
Telephone: (501) 371-1981

CALIFORNIA

STATE PARENT LOCATOR SERVICE

Parent Locator Service
1800 I Street
P.O. Box 13300
Sacramento, California 95813
Telephone: (916) 445-6215

IV-D AGENCY

Support Enforcement Branch
Department of Social Services
744 P Street
Sacramento, California 95814
Telephone: (916) 322-6384

URESA STATE INFORMATION AGENT

Gloria F. DeHart
Deputy Attorney General
Office of the Attorney General
6000 State Building
San Francisco, California 94832
Telephone: (415) 557-0799

COLORADO

STATE PARENT LOCATOR SERVICE

Department of Social Services
1575 Sherman Street
Denver, Colorado 80203
Telephone: (303) 839-2422

IV-D AGENCY

Division of Child Support
Enforcement
Department of Social Services
1575 Sherman Street
Denver, Colorado 80203
Telephone: (303) 839-2422

URESA STATE INFORMATION AGENT

Kathie Huskey
Division of Child Support Enforcement
Department of Social Services
1575 Sherman Street
Denver, Colorado 80203
Telephone: (303) 839-2422

CONNECTICUT

STATE PARENT LOCATOR SERVICE

Bureau of Child Support
Department of Human Resources
110 Bartholomew Avenue
Hartford, Connecticut 06115
Telephone: (203) 566-3053

IV-D AGENCY

Bureau of Child Support
Department of Human Resources
110 Bartholomew Avenue
Hartford, Connecticut 06115
Telephone: (203) 566-3053

URESA STATE INFORMATION AGENT

Anthony J. Salius, Director
Superior Court
Family Division
80 South Main Street
West Hartford, Connecticut 06107
Telephone: (203) 566-5914

DELAWARE

STATE PARENT LOCATOR SERVICE

Bureau of Child Support Enforcement
Department of Health & Social
Services
920 Church Street
Wilmington, Delaware 19801
Telephone: (302) 571-3620

IV-D AGENCY

Bureau of Child Support Enforcement
Depar. of Health & Social Services
920 Church Street
Wilmington, Delaware 19801
Telephone: (302) 571-3620

URESA STATE INFORMATION AGENT

William McDonough
Chief of Support for Family Court
Family Court of Delaware
600 Market,
P.O. Box 2359
Wilmington, Delaware 19899
Telephone: (302) 571-2592

DISTRICT OF COLUMBIA

STATE PARENT LOCATOR SERVICE

Office of Paternity and Child
Support Enforcement
Department of Human Resources
601 Indiana Avenue, NW, Room 1000
Washington, D.C. 20001

IV-D AGENCY

Office of Paternity & Child Support
Enforcement
Department of Human Resources
601 Indiana Avenue, NW, Room 1008
Washington, D.C. 20001
Telephone: (202) 724-8820

URESA STATE INFORMATION AGENT

George Masson, Assistant
Corporation Counsel
D.C. Office of Corporation Counsel
500 Indiana Avenue, NW, Room 4450
Washington, D.C. 20004
Telephone: (202) 727-3888

FLORIDA

STATE PARENT LOCATOR SERVICE

Child Support Enforcement
Department of Health & Rehabilitation
Services
1317 Winewood Boulevard
Tallahassee, Florida 32301
Telephone: (904) 488-9900

IV-D AGENCY

Child Support Enforcement
Department of Health & Rehabilitation
Services
1317 Winewood Boulevard
Tallahassee, Florida 32301
Telephone: (904) 488-9900

URESA STATE INFORMATION AGENT

Honorable James C. Smith
Attorney General
Attn: URESA Information Agent
The Capitol
Tallahassee, Florida 32304
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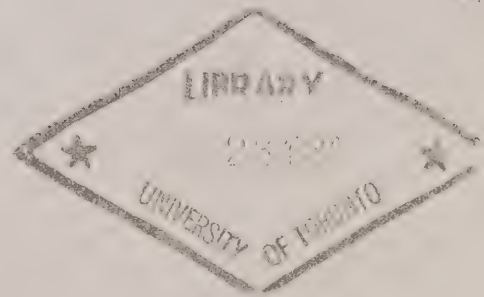
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CONFERENCES FEDERALES-PROVINCIALES DES
PROCUREURS GENERAUX, DES MINISTRES RESPONSABLES
DE LA JUSTICE PENALE ET DES MINISTRES RESPONSABLES
DU SYSTEME CORRECTIONNEL

Le rapport final du Comité fédéral-provincial
sur l'exécution au Canada des ordonnances de
pension alimentaire et de garde d'enfant

Comité fédéral-provincial



OTTAWA (Ontario)
Les 11 et 12 juillet 1983

LE RAPPORT FINAL DU COMITÉ FÉDÉRAL-PROVINCIAL
SUR L'EXÉCUTION AU CANADA DES ORDONNANCES DE
PENSION ALIMENTAIRE
ET DE GARDE D'ENFANT

Le 7 juin 1983

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RECOMMANDATIONS EN VUE DE FACILITER L'EXÉCUTION AU CANADA DES ORDONNANCES DE PENSION ALIMENTAIRE OU DE GARDE D'ENFANTS

INTRODUCTION

Lors de leur rencontre du 22 juin 1981, au Mont Sainte-Anne (Québec), les sous-ministres responsables de la justice pénale ont mis sur pied un comité fédéral-provincial chargé de définir les moyens de faciliter l'exécution des ordonnances relatives au soutien financier, à la garde et au droit de visite des enfants, et de recommander aux gouvernements les mesures à prendre en ce sens.

Cette initiative visait à répondre aux inquiétudes soulevées au Canada par le nombre croissant de pensions alimentaires qui ne sont pas versées et d'ordonnances relatives à la garde des enfants qui ne sont pas respectées, ainsi qu'aux problèmes rencontrés en ce qui a trait à l'exécution des ordonnances extra-provinciales, à cause de la mobilité de plus en plus grande des personnes séparées ou divorcées. Selon une étude de Statistique Canada, en 1978, intitulée "Fréquence de la mobilité géographique de la population canadienne", c'est chez les personnes séparées ou divorcées que l'on retrouve le plus haut taux de mobilité. Bien qu'il n'existe pas de chiffres précis sur l'inexécution des ordonnances alimentaires et la violation des ordonnances relatives à la garde des enfants, la Commission de réforme du droit du Canada estimait en 1974 que, au Canada, 75 % des ordonnances alimentaires ne sont pas respectées intégralement.

HISTORIQUE

Au cours de l'été 1981, le comité, composé des représentants du gouvernement fédéral et des dix provinces, a examiné les mesures d'exécution, tant à l'intérieur des provinces qu'entre elles, des ordonnances de soutien financier et de garde d'enfants rendues en application des lois fédérales et provinciales. Une attention toute particulière a été accordée au système mise en place au Manitoba, lequel passait à l'époque pour le plus complet au Canada. Une description de ce système est donnée à l'annexe A.

Le comité a examiné des propositions de réforme émanant de plusieurs sources, notamment la Commission de réforme du droit du Canada, les commissions de réforme du droit des provinces, l'Alberta Institute of Law Research and Reform, le Conseil consultatif de la situation de la femme, l'Association du barreau canadien, ainsi que les particuliers et les associations privées. Un certain nombre de ces projets de réforme ont été mis de côté. À titre d'exemple, une proposition, formulée dans un document de travail préparé à l'intention de la Commission de réforme du

droit du Canada, suggérant de s'adresser à la Cour fédérale du Canada pour l'exécution interprovinciale des ordonnances de pension alimentaire en cas de divorce, a été écartée pour le motif que l'on ne peut avoir facilement accès à ce tribunal, et que son utilisation irait à l'encontre des tendances actuelles à l'intégration des compétences en ce qui concerne le règlement des différends familiaux. Bien que souhaitables peut-être, un certain nombre de propositions ont été jugées difficilement applicables à long terme. Mentionnons, entre autres, la proposition concernant la création d'un système d'exécution des ordonnances à l'échelle nationale, relevant du gouvernement fédéral.

Le comité a évalué les diverses mesures d'exécution présentement appliquées ou faisant l'objet d'une étude dans chacune des provinces, afin de déterminer s'il est possible d'emprunter les meilleurs éléments qu'on y retrouve. Le comité a fait des recommandations afin de réaliser une certaine uniformité des lois et de la procédure en matière d'exécution des ordonnances intra-provinciales et extra-provinciales. Le comité est d'avis que ses recommandations visant à résoudre les difficultés en matière d'exécution reflètent une attitude raisonnable et pondérée.

Le rapport provisoire du comité, présenté aux procureurs généraux et ministres de la Justice du gouvernement fédéral et des provinces lors de la conférence tenue à Ottawa les 7, 8 et 9 décembre 1981 contenait trois séries de recommandations, dont l'une à l'intention des gouvernements provinciaux, une autre à l'intention du gouvernement fédéral, et une dernière, portée à l'attention conjointe des deux paliers de gouvernement. Les ministres de la Justice et procureurs généraux ont convenu d'analyser les implications des recommandations formulées à l'intention de leurs niveaux de gouvernement respectifs. Il a en outre été décidé que les recommandations portées à l'attention conjointe des gouvernements fédéral et provinciaux seraient retournées au comité pour étude ultérieure.

Le comité a tenu quatre autres réunions afin d'étudier les implications des recommandations portées à l'attention conjointe des gouvernements fédéral et provinciaux. Conformément aux instructions supplémentaires fournies par les sous-ministres lors de la rencontre tenue à Ottawa le 2 décembre 1982, le présent rapport comprend notamment des informations sur la législation et la procédure des provinces en ce qui concerne chacune des recommandations. Il faut noter toutefois que, compte tenu du manque de temps et des ressources dont il disposait, le Comité a été dans l'impossibilité d'évaluer utilement les incidences financières de ses recommandations.

Le présent rapport, rédigé en deux parties, comprend les recommandations présentées lors du rapport provisoire du 13 octobre 1981. Des notes explicatives suivent chacune des recommandations. La première partie comprend les recommandations à l'intention des gouvernements provinciaux (1 à 15) et celles à l'intention du gouvernement fédéral (16 à 25), on y retrouve des tableaux ou des notes indiquant si la procédure et les dispositions législatives considérées existent ou non. La deuxième partie comprend les recommandations portées à l'attention conjointe des gouvernements fédéral et provinciaux. Pour plus de clarté et de commodité, le rapport comprend plusieurs annexes:

- A - Exécution des ordonnances de pension alimentaire ou de garde d'enfants au Manitoba;
- B - Extrait des règles de la Colombie-Britannique sur le divorce;
- C - Rapport du sous-comité sur la saisie-arrêt;
- D - Statistiques sur l'exécution des ordonnances de pension alimentaire ou de garde d'enfants;
- E - Registre central;
- F - Décret sur les passeports canadiens;
- G - Rapports d'activités sur les recommandations formulées à l'intention des gouvernements fédéral et provinciaux.

De plus, un répertoire du personnel et des procédures d'exécution des ordonnances de pension alimentaire et de garde d'enfant est également joint au présent rapport.

Les recommandations qui suivent reflètent les opinions exprimées par la majorité des membres du comité. Ces recommandations sont soumises à l'examen des sous-ministres et, en dernière analyse, à celui des ministres de la Justice et procureurs généraux.

PARTIE I

RECOMMANDATIONS À L'INTENTION DES GOUVERNEMENTS PROVINCIAUX ET DU GOUVERNEMENT FÉDÉRAL

a) Recommandations à l'intention des gouvernements provinciaux:

1. **MISE EN OEUVRE D'UN SYSTÈME INFORMATISÉ, PLUTÔT QUE MANUEL, DE CONTRÔLE DU PAIEMENT DES PENSIONS ALIMENTAIRES**

Après avoir comparé les systèmes manuels et les systèmes informatisés de contrôle, le comité en est venu à la conclusion qu'un système informatisé pourrait réduire au minimum les problèmes tels que les inexactitudes, les retards à relever le défaut de paiement, et les retards occasionnés par les procédures d'exécution.

Le tableau qui suit identifie les provinces qui disposent d'un système informatisé pour effectuer le contrôle du paiement des pensions alimentaires:

SYSTÈME INFORMATISÉ DE CONTRÔLE DU PAIEMENT DES PENSIONS ALIMENTAIRES			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique		x	À l'étude
Alberta		x	
Saskatchewan		x	À l'étude
Manitoba	x		
Ontario		x	Un système informatisé existe afin de consigner la totalité des versements de pension alimentaire faits à un Tribunal de la famille; cependant, les versements dûs dans chacun des dossiers du tribunal sont soumis à un contrôle manuel.
Québec	x		
Nouveau-Brunswick		x	
Nouvelle-Écosse		x	À l'étude
Île-du-Prince-Édouard		x	
Terre-Neuve		x	

2. **ADOPTION DE DISPOSITIONS LÉGISLATIVES EXIGEANT QUE TOUT PARTICULIER OU ORGANISME PROVINCIAL ASSUJETTI AUX LOIS PROVINCIALES DIVULGUE, SUR ORDRE DU TRIBUNAL, L'ADRESSE, LE LIU DE TRAVAIL OU D'AUTRES RENSEIGNEMENTS PERMETTANT DE RETRACER LES MEMBRES D'UNE MÊME FAMILLE, DANS LE BUT DE PRÉSENTER UNE DEMANDE DE PENSION ALIMENTAIRE OU DE GARDE D'ENFANTS OU AUX FINS D'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE OU**

Cette loi exigerait des organismes provinciaux, des syndicats, des organisations professionnelles, des personnes ayant la garde des banques de données provinciales et des particuliers, qu'ils divulguent les coordonnées ou toute autre information qu'ils possèdent et qui pourraient aider à repérer:

- a) une personne qui ne respecte pas une ordonnance en vigueur portant sur le versement d'une pension alimentaire;
- b) une personne qui a enlevé un enfant;
- c) un enfant qui a été enlevé; ou
- d) l'une des parties à une demande soumise à un tribunal, lorsqu'il faut obtenir une adresse afin de lui faire signifier des documents.

Le comité était d'avis que ces renseignements ne devraient être divulgués qu'à un officier de justice ou à un fonctionnaire désigné du gouvernement, et non au demandeur. En outre, il y aurait lieu d'imposer une peine en cas de défaut de divulguer une information.

Le droit d'une personne à la protection de sa vie privée est moins important que le droit d'un enfant séquestré de vivre avec celui de ses parents qui en a la garde ou que le droit d'une famille à charge de recevoir sa pension alimentaire. Les dispositions législatives de ce genre adoptées au Canada et aux États-Unis n'ont pas entraîné d'abus. L'Alberta Institute of Law Research and Reform et le Conseil consultatif canadien de la situation de la femme ont souscrit à cette recommandation par voie de résolution, tandis que l'Association du barreau canadien l'a rejetée, également par voie de résolution.

Le tableau qui suit identifie les provinces qui ont adopté une loi exigeant la divulgation de renseignements:

LOI EXIGEANT LA DIVULGATION DE RENSEIGNEMENTS			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique		x	
Alberta		x	
Saskatchewan		x	
Manitoba	x		
Ontario	x		
Québec	x		Pension alimentaire seulement.
Nouveau-Brunswick	x		
Nouvelle-Écosse		x	
Île-du-Prince-Édouard		x	
Terre-Neuve		x	

3. MISE SUR PIED ET MAINTIEN D'UNE BANQUE INFORMATISÉE DE DONNÉES DANS CHAQUE PROVINCE

Il est recommandé que le gouvernement de chaque province étudie la possibilité de constituer une banque informatisée de données qui fonctionnerait conformément aux recommandations 1 et 2.

Dans le but de faciliter l'exécution des ordonnances en question partout au Canada, il faudrait que la banque informatisée de données de chaque province soit reliée à une banque informatisée centrale.

Le tableau qui suit identifie les provinces qui disposent d'une banque informatisée de données sur l'exécution:

BANQUE INFORMATISÉE DE DONNÉES			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique		x	
Alberta		x	
Saskatchewan		x	
Manitoba		x	
Ontario		x	
Québec		x	
Nouveau-Brunswick		x	
Nouvelle-Écosse		x	
Île-du-Prince-Édouard		x	
Terre-Neuve		x	

4. ELABORATION D'UNE PROCÉDURE D'EXÉCUTION AUTOMATIQUE DES ORDONNANCES DE PENSION ALIMENTAIRE QUI SOIT À L'INITIATIVE DE L'ÉTAT PLUTÔT QUE DES PARTICULIERS.

Les gouvernements provinciaux n'assument pas tous le même rôle en ce qui a trait à l'exécution des ordonnances de pension alimentaire. Après avoir comparé les diverses procédures suivies, le comité recommande que chaque province étudie la possibilité de mettre sur pied un programme d'exécution automatique à l'initiative de l'État plutôt que des particuliers.

Le tableau qui suit identifie les provinces qui ont un système d'exécution, à l'initiative de l'État, des ordonnances alimentaires:

EXÉCUTION, À L'INITIATIVE DE L'ÉTAT, DES ORDONNANCES ALIMENTAIRES			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique		x	À l'étude
Alberta		x	Sauf dans le cas des assistés sociaux
Saskatchewan		x	À l'étude
Manitoba	x		
Ontario	x		Dépendamment des ressources allouées
Québec		x	Sur demande seulement
Nouveau-Brunswick	x		
Nouvelle-Écosse	x		
Île-du-Prince-Édouard	x		
Terre-Neuve		x	Laissé à la discrétion des agents d'exécution

5. ACCENT MIS SUR DES PROCÉDURES D'EXÉCUTION NE NÉCESSITANT PAS LA TENUE D'AUDITIONS PAR LE TRIBUNAL: EXTENSION DU POUVOIR DU TRIBUNAL OU DE SES OFFICIERS AFIN D'ASSURER LE PAIEMENT D'UN ARRIÉRÉ DE PENSION ALIMENTAIRE, SANS LA TENUE D'UNE AUDITION.

Le comité a étudié et comparé les solutions suivantes:

- convocation à comparaître devant le tribunal pour "exposer les raisons"; et
- extension des pouvoirs du tribunal ou de ses officiers d'assurer le paiement d'un arriéré de pension alimentaire, sans la tenue d'une audition.

L'obligation de comparaître pour "exposer les raisons" occasionne souvent un retard considérable. Le comité était d'avis que, une fois l'ordonnance rendue, le demandeur ne devrait pas être obligé de remettre la question en litige, en cas de défaut de paiement. Ce défaut devrait être traité comme toute violation d'un jugement ou d'une autre ordonnance. Par conséquent, les provinces devraient étudier la possibilité d'étendre les pouvoirs du tribunal ou de ses officiers dans le but de leur permettre d'assurer le paiement d'un arriéré de pension alimentaire, sans la tenue d'une audition. À titre d'exemple, il devrait être possible pour le demandeur de remédier au défaut de paiement en déposant un affidavit et en intentant aussitôt après les recours civils appropriés, telle qu'une ordonnance permanente de saisie-arrêt. La personne qui est en défaut aurait alors la possibilité de contester l'action prise contre elle.

Le tableau qui suit identifie les provinces qui mettent l'accent sur des procédures d'exécution ne nécessitant pas d'audition:

ACCENT MIS SUR DES PROCÉDURES D'EXÉCUTION NE NÉCESSITANT PAS D'AUDITION			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique		x	Une audience est nécessaire pour déterminer la capacité de payer
Alberta		x	
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Québec	x		Dépendamment des ressources allouées
Nouveau-Brunswick		x	En voie de développement Solution envisagée très sérieusement
Nouvelle-Écosse		x	
Île-du-Prince-Édouard		x	
Terre-Neuve	x		

6. **ADOPTION DE DISPOSITIONS LÉGISLATIVES ABOLISSANT LE PRINCIPE SELON LEQUEL ON NE PEUT RÉCLAMER PLUS D'UN AN D'ARRIÉRÉ DE PENSION ALIMENTAIRE ET PRÉVOYANT QU'AUCUN DÉLAI N'EST APPLICABLE AU RECOUVREMENT DE L'ARRIÉRÉ D'UNE PENSION ALIMENTAIRE, SAUF SI LE RECOUVREMENT TOTAL S'AVÈRE INJUSTE ET INÉQUITABLE.**

Dans certaines provinces, on suit encore le principe selon lequel on ne peut réclamer plus d'un an d'arriéré de pension alimentaire. Ce principe prévoit qu'un tribunal ne pourra

exiger qu'un an d'arrérages, bien que les arrérages se soient accumulés durant une période beaucoup plus longue et que la famille à charge ait dû, par conséquent, encourir d'importantes dettes ou solliciter de l'aide sociale. Il ne devrait donc y avoir aucune limite quant à la période qui puisse s'appliquer au recouvrement de l'arriéré de pension alimentaire, à moins que la personne qui est en défaut puisse prouver que l'obligation de rembourser le montant total des arrérages serait injuste et inéquitable.

Le tableau qui suit identifie les provinces qui ont des dispositions législatives abolissant le principe selon lequel on ne peut réclamer plus d'un an d'arriéré de pension alimentaire:

DISPOSITIONS LÉGISLATIVES ABOLISSANT LE PRINCIPE SELON LEQUEL ON NE PEUT RÉCLAMER PLUS D'UN AN D'ARRIÉRÉ DE PENSION ALIMENTAIRE			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique		x	
Alberta		x	Sans objet
Saskatchewan		x	
Manitoba	x		
Ontario		x	Ne sont pas applicables
Québec		x	On ne peut réclamer plus de trois ans d'arriérés
Nouveau-Brunswick		x	
Nouvelle-Écosse		x	Sans objet
Île-du-Prince-Édouard		x	Sans objet
Terre-Neuve		x	Sans objet

7. ADOPTION DE DISPOSITIONS LÉGISLATIVES PERMETTANT D'ASSURER LE PAIEMENT DES PENSIONS ALIMENTAIRES STIPULÉES DANS LES ACCORDS DE SÉPARATION.

À l'heure actuelle, quatre des dix provinces possèdent des dispositions législatives qui permettent d'assurer le paiement des pensions alimentaires accordées soit par une ordonnance judiciaire, soit par une entente de séparation. Les six autres provinces devraient étudier la possibilité d'étendre la portée de leurs dispositions législatives afin de prévoir le paiement des pensions alimentaires exigé en vertu des ententes de séparation.

Le tableau qui suit identifie les provinces qui ont adopté des dispositions législatives prévoyant l'exécution des versements de pension alimentaire stipulés dans les accords de séparation:

DISPOSITIONS LÉGISLATIVES PRÉVOYANT L'EXÉCUTION DES VERSEMENTS DE PENSION ALIMENTAIRE STIPULÉS DANS LES ACCORDS DE SÉPARATION			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique	x		
Alberta		x	
Saskatchewan		x	
Manitoba		x	
Ontario		x	
Québec		x	
Nouveau-Brunswick	x		
Nouvelle-Écosse	x		
Île-du-Prince-Édouard	x		
Terre-Neuve		x	

**8. ADOPTION DE DISPOSITIONS LÉGISLATIVES PRÉVOYANT DES
RECOURS PARTICULIERS POUR ASSURER LE PAIEMENT DES
PENSIONS ALIMENTAIRES.**

Il est recommandé que chaque province étudie la possibilité de mettre en vigueur des dispositions législatives prévoyant les recours suivants:

- a) ORDONNANCES DE SAISIE-ARRÊT OU DE SAISIE-ARRÊT CONTINUE;
- b) BREF D'EXÉCUTION, MANDAT DE SAISIE-EXÉCUTION, SAISIE MOBILIÈRE;
- c) EMPRISONNEMENT;
- d) AMENDES;
- e) CONSTITUTION DE SÛRETÉS OU CAUTIONNEMENT;
- f) ENREGISTREMENT D'UNE ORDONNANCE CONTRE UN BIEN IMMOBILIER;
- g) NOMINATION D'UN SÉQUESTRE;
- h) MANDAT D'ARRÊT, DANS LES CAS OÙ L'ON CRAINT QUE LA PERSONNE EN DÉFAUT N'ÉCHAPPE À LA COMPÉTENCE JUDICIAIRE DONT ELLE RELEVÉ;
- i) ORDONNANCE "EX PARTE" RESTREIGNANT L'ALIÉNATION DES BIENS.

RECOMMANDATION N° 8(a)

Pour assurer les versements courants d'une pension alimentaire ainsi que le paiement de l'arriéré, les revenus suivants devraient être assujettis à la saisie-arrêt ou à la saisie-arrêt continue des sommes dues par une personne à une autre. Ces revenus comprendraient notamment:

les traitements, les salaires, les commissions, les honoraires, les sommes payables en vertu d'un régime de retraite, d'une police de rente viagère ou de rente à terme fixe, d'une police d'assurance contre les accidents, la maladie ou l'invalidité, de même que les indemnités payables en vertu d'une loi sur les accidents de travail.

On demande aussi aux provinces de se prononcer sur la priorité qui doit être attribuée aux ordonnances en question. En outre, chaque province devrait légiférer afin d'éviter que les personnes en défaut ne perdent leur emploi à la suite d'une ordonnance de ce genre, et de leur fournir un recours en réintégration et un recours en dommages-intérêts, ou l'un des deux selon le cas.

Le tableau qui suit identifie les provinces qui ont adopté des dispositions législatives permettant le recours à la saisie-arrêt continue comme moyen d'exécution forcée des ordonnances de pension alimentaire:

SAISIE-ARRÊT CONTINUE			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique	x		
Alberta	x		
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Québec	x		
Nouveau-Brunswick	x		
Nouvelle-Écosse	x		
Île-du-Prince-Édouard	x		
Terre-Neuve	x		Seulement sur consentement

RECOMMANDATION 8(b)

Le tableau qui suit identifie les provinces qui ont adopté des dispositions législatives permettant le recours au bref d'exécution, au mandat de saisie-exécution et à la saisie mobilière comme moyens d'exécution forcée des ordonnances de pension alimentaire:

BREF D'EXÉCUTION, MANDAT DE SAISIE-EXÉCUTION, SAISIE MOBILIÈRE			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique	x		
Alberta	x		
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Québec	x		
Nouveau-Brunswick	x		
Nouvelle-Écosse	x		
Île-du-Prince-Édouard	x		
Terre-Neuve	x		

RECOMMANDATION 8(c)

Le tableau qui suit identifie les provinces qui ont adopté des dispositions législatives permettant le recours à l'emprisonnement pour défaut de verser la pension alimentaire conformément à une ordonnance:

EMPRISONNEMENT			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique	x		
Alberta	x		
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Québec		x	
Nouveau-Brunswick	x		
Nouvelle-Écosse	x		
Île-du-Prince-Édouard	x		
Terre-Neuve	x		

RECOMMANDATION 8(d)

Le tableau qui suit identifie les provinces qui ont adopté des dispositions législatives permettant l'imposition d'une amende pour défaut de verser la pension alimentaire conformément à une ordonnance:

AMENDES			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique	x		
Alberta		x	
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Québec		x	
Nouveau-Brunswick		x	
Nouvelle-Écosse		x	
Île-du-Prince-Édouard		x	
Terre-Neuve		x	

RECOMMANDATION 8(e)

Le tableau qui suit identifie les provinces qui ont adopté des dispositions législatives permettant la constitution de sûretés ou d'un cautionnement en garantie de l'exécution d'une ordonnance de pension alimentaire:

CONSTITUTION DE SÛRETÉS OU D'UN CAUTIONNEMENT			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique	x		
Alberta	x		
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Québec	x		
Nouveau-Brunswick	x		
Nouvelle-Écosse		x	
Île-du-Prince-Édouard		x	
Terre-Neuve		x	

RECOMMANDATION 8(f)

Le tableau qui suit identifie les provinces qui ont adopté des dispositions législatives permettant l'enregistrement d'une ordonnance de pension alimentaire contre un bien immobilier:

ENREGISTREMENT D'UNE ORDONNANCE CONTRE UN BIEN IMMOBILIER			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique	x		
Alberta	x		
Saskatchewan	x		
Manitoba	x		
Ontario	x		
Québec	x		
Nouveau-Brunswick	x		
Nouvelle-Écosse		x	
Île-du-Prince-Édouard	x		
Terre-Neuve	x		

RECOMMANDATION 8(g)

Le tableau qui suit identifie les provinces qui ont adopté des dispositions législatives permettant la nomination d'un séquestre relativement à l'exécution des ordonnances de pension alimentaire:

NOMINATION D'UN SÉQUESTRE			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique	x		
Alberta		x	
Saskatchewan		x	
Manitoba	x		Difficile à utiliser
Ontario	x		
Québec		x	
Nouveau-Brunswick		x	
Nouvelle-Écosse		x	
Île-du-Prince-Édouard		x	
Terre-Neuve		x	

RECOMMANDATION 8(h)

Le tableau qui suit identifie les provinces qui ont adopté des dispositions législatives permettant l'émission d'un mandat d'arrêt lorsque l'on craint que la personne en défaut de verser une pension alimentaire conformément à une ordonnance ne quitte la province:

MANDAT D'ARRÊT - SI L'ON CRAINT QUE LA PERSONNE EN DÉFAUT NE QUITTE LA PROVINCE			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique		x	
Alberta	x		
Saskatchewan	x		
Manitoba		x	
Ontario	x		
Québec		x	
Nouveau-Brunswick	x		
Nouvelle-Écosse		x	
Île-du-Prince-Édouard		x	
Terre-Neuve	x		

RECOMMANDATION 8(i)

Le tableau qui suit identifie les provinces qui ont adopté des dispositions législatives permettant l'émission d'une ordonnance "ex parte" visant à restreindre l'aliénation de biens:

ORDONNANCE "EX PARTE" VISANT À RESTREINDRE L'ALIÉNATION DE BIENS			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique		x	Seulement disponible pour fins de division des biens familiaux, et non pour l'exécution des ordonnances de doutien
Alberta		x	
Saskatchewan	x		
Manitoba		x	
Ontario	x		
Québec		x	
Nouveau-Brunswick	x		
Nouvelle-Écosse		x	Pas dans le cas des jugements de divorce
Île-du-Prince-Édouard	x		
Terre-Neuve	x		

9. ADOPTION, PAR LES PROVINCES, DU PROJET DE LOI UNIFORME SUR L'EXÉCUTION RÉCIPROQUE DES OBLIGATION ALIMENTAIRES, À LA CONDITION QUE L'ARTICLE 7(7) PROPOSÉ SOIT SUPPRIMÉ ET RENVOYÉ À LA CONFÉRENCE SUR L'UNIFORMISATION DES

LOIS AU CANADA POUR ÊTRE RÉDIGÉ À NOUVEAU. SELON LES RECOMMANDATIONS DU COMITÉ, L'ARTICLE 7(7) DEVRAIT ÊTRE LIBELLÉ DE TELLE SORTE QUE, DANS LE CAS OÙ L'UNE DES PARTIES A CONTINUÉ DE RÉSIDER DANS LA PROVINCE ORIGINNAIRE ET OÙ L'AUTRE PARTIE EST ALLÉE VIVRE DANS UNE PROVINCE QUI A ENTÉRINÉ LE PRINCIPE DE L'EXÉCUTION RÉCIPROQUE, LE TRIBUNAL DE LA PROVINCE ORIGINNAIRE CONSERVE, EN DERNIER RESSORT, LE POUVOIR DE MODIFIER L'ORDONNANCE. QUANT AU TRIBUNAL DE LA PROVINCE QUI A ENTÉRINÉ LE PRINCIPE DE L'EXÉCUTION RÉCIPROQUE, ON LUI ATTRIBUERAIT LE POUVOIR D'ACCUEILLIR UNE REQUÊTE VISANT L'OBTENTION D'UNE ORDONNANCE PROVISOIRE DE MODIFICATION, TOUT EN LAISSANT AU TRIBUNAL DE LA PROVINCE ORIGINNAIRE LE POUVOIR DE CONFIRMER OU DE REJETER CETTE DÉCISION.

Certains membres du comité ont exprimé des doutes quant aux aspects pratiques de l'application de l'article 7(7) du projet de loi uniforme sur l'exécution réciproque des obligations alimentaires, approuvé en 1979 par la Conférence sur l'uniformisation des lois au Canada. L'article 7(7) tel que proposé, permettrait au tribunal d'une province ayant souscrit au principe de l'exécution réciproque, de modifier une ordonnance alimentaire définitive rendue dans une autre province, même si l'une des parties a continué de résider dans la province originaire. Le projet de loi entraînerait de graves injustices pour la famille à charge qui demeure dans la province où l'ordonnance a été accordée initialement. Même si l'article 7(7)c) prévoit que l'affaire doit être renvoyée devant le tribunal du lieu où demeure le demandeur, cela n'est pas suffisant car on ne devrait pas conférer au tribunal devant lequel cette affaire a été inscrite le pouvoir de modifier en dernier ressort l'ordonnance définitive rendue dans une autre province.

On admet qu'il peut être onéreux pour l'intimé d'avoir à retourner devant le tribunal initial pour faire modifier la première ordonnance surtout lorsque les circonstances ont changées et que sa situation financière s'est détériorée. Toutefois, le comité propose de remplacer le paragraphe 7(7) par une disposition plus pertinente, qui conférerait au tribunal devant lequel une affaire est inscrite, le pouvoir d'accueillir une requête visant à obtenir une "ordonnance provisoire" de modification.

Par la suite, la transcription des notes sténographiques de ces procédures pourrait être envoyée au tribunal initial qui avait accordé l'ordonnance, et le demandeur serait invité à expliquer sa situation actuelle. Le tribunal initial aurait alors le pouvoir de confirmer ou d'infirmer la décision qui modifie l'ordonnance. Le comité est d'avis que cette procédure de modification est préférable à celle que propose

l'article 7(7), étant donné que le tribunal initial conserverait ainsi le pouvoir définitif de statuer sur l'ordonnance.

Le comité a recommandé, en octobre 1981, que l'article 7(7) soit inscrit à l'ordre du jour de la Conférence sur l'uniformisation des lois de 1982 pour qu'il y soit étudié et que les provinces adoptent le projet de loi uniforme sur l'exécution réciproque des obligations alimentaires, étant toutefois entendu que l'article 7(7) ne sera proclamé que lorsqu'il aura fait l'objet d'une étude à la Conférence sur l'uniformisation des lois. En 1982, la Conférence sur l'uniformisation des lois au Canada a adopté l'article 7(7) tel que proposé.

Le tableau qui suit identifie les provinces qui ont adopté le projet de loi uniforme sur l'exécution réciproque des obligations alimentaires, avec modification de l'article 7(7):

ADOPTION DU PROJET DE LOI UNIFORME SUR L'EXÉCUTION RÉCIPROQUE DES OBLIGATIONS ALIMENTAIRES, AVEC MODIFICATION DE L'ARTICLE 7(7)			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique		x	
Alberta		x	À l'étude
Saskatchewan		x	Prévue en 1983
Manitoba	x		Proclamation en 1983
Ontario	x		
Québec		x	À l'étude
Nouveau-Brunswick	x		Projet de loi censé être adopté en 1983
Nouvelle-Écosse		x	Prévue en 1983
Île-du-Prince-Édouard		x	Prévue en 1983
Terre-Neuve		x	Prévue en 1983

10. ADOPTION D'UNE LOI UNIFORME PRÉVOYANT DES ORDONNANCES INTERDISANT À L'UN DES CONJOINTS DE MOLESTER, D'IMPORTUNER OU DE HARCELER L'AUTRE CONJOINT OU UN ENFANT CONFIÉ À LA GARDE DE CELUI-CI.

Le tableau qui suit identifie les provinces qui ont adopté une loi uniforme prévoyant des ordonnances interdisant à un conjoint de molester, d'importuner ou de harceler l'autre conjoint ou un enfant confié à la garde de celui-ci:

LOI UNIFORME PRÉVOYANT DES ORDONNANCES INTERDISANT DE MOLESTER, D'IMPORTUNER OU DE HARCELER			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique		x	
Alberta		x	
Saskatchewan		x	Sera étudiée
Manitoba	x		
Ontario	x		
Québec		x	À l'étude
Nouveau-Brunswick	x		
Nouvelle-Écosse		x	À l'étude
Île-du-Prince-Édouard	x		Sur demande au juge
Terre-Neuve		x	Disponible au moyen d'une ordonnance du tribunal

**11. ADOPTION DE DISPOSITIONS LÉGISLATIVES AUTORISANT LA CESSION DES
PENSIONS ALIMENTAIRES AU GOUVERNEMENT PROVINCIAL, LORSQUE LE
BÉNÉFICIAIRE REÇOIT DES PRESTATIONS D'AIDE SOCIALE.**

Un certain nombre de provinces ont déjà adopté une telle mesure législative et il serait souhaitable que toutes les autres le fassent également.

Le tableau qui suit identifie les provinces qui ont adopté une loi autorisant la cession des pensions alimentaires au gouvernement provincial, lorsque le bénéficiaire reçoit des prestations d'aide sociale:

CESSION DES PENSIONS ALIMENTAIRES AU GOUVERNEMENT PROVINCIAL DANS LES CAS D'AIDE SOCIALE			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique	x		
Alberta	x		
Saskatchewan		x	
Manitoba	x		
Ontario	x		
Québec	x		
Nouveau-Brunswick	x		
Nouvelle-Écosse		x	
Île-du-Prince-Édouard	x		
Terre-Neuve		x	

12. EXTENSION DU MANDAT CONFIE AUX AVOCATS DE LA COURONNE PROVINCIALE, EN MATIÈRE D'EXÉCUTION, AFIN D'Y INCLURE L'EXÉCUTION DES ORDONNANCES DE GARDE D'ENFANTS RENDUES À L'EXTÉRIEUR DE LA PROVINCE.

La plupart des provinces autorisent les avocats de la Couronne à représenter des personnes à charge d'une autre province pour les fins de l'exécution des ordonnances de pension alimentaire rendues dans cette autre province, lorsque le débiteur défaillant réside dans la province. Le comité a procédé à l'examen d'un programme qui permet aux procureurs de la Couronne provinciale de représenter un parent qui réside à l'extérieur de la province et qui a la garde d'un enfant, lorsque cet enfant a été enlevé dans la province. Ce nouveau rôle attribué au procureur de la Couronne provinciale n'a entraîné, pour la province, que des frais supplémentaires minimes et a permis d'établir un réseau de coopération entre la police, la Couronne, les organismes d'aide à l'enfant et les tribunaux. Grâce à ce programme, les procédures sont prises plus rapidement, ce qui permet de remettre rapidement des enfants qui ont été enlevés aux parents qui en ont la garde.

On reconnaît que dans le meilleur intérêt de l'enfant, il faut traiter de telles questions aussi rapidement et efficacement que possible. L'Association du barreau canadien et l'Association nationale de la femme et le droit ont, par des résolutions adoptées en 1981, donné leur appui à l'extension du mandat confié aux avocats de la Couronne provinciale en matière d'exécution des ordonnances rendues à l'extérieur de la province.

Par conséquent, toutes les provinces devraient envisager la possibilité d'étendre le mandat confié aux avocats de la Couronne provinciale afin d'y inclure l'exécution des ordonnances de garde d'enfants rendues à l'extérieur de la province.

Le tableau qui suit identifie les provinces dans lesquelles l'avocat de la Couronne participe à l'exécution des ordonnances de garde rendues à l'extérieur de la province:

L'AVOCAT DE LA COURONNE PARTICIPE À L'EXÉCUTION DES ORDONNANCES DE GARDE RENDUES À L'EXTÉRIEUR DE LA PROVINCE			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique		x	À l'étude, pour la Convention de la Haye
Alberta		x	
Saskatchewan		x	À l'exception de ce que prévoit la Convention de La Haye
Manitoba	x		
Ontario		x	
Québec		x	À l'étude
Nouveau-Brunswick	x		
Nouvelle-Écosse		x	
Île-du-Prince-Édouard		x	
Terre-Neuve		x	À L'étude

13. ADOPTION DE DISPOSITIONS LÉGISLATIVES PRÉVOYANT DES RECOURS PRÉCIS POUR ASSURER L'EXÉCUTION DES ORDONNANCES DE GARDE D'ENFANT

Le comité a recommandé que le gouvernement de chaque province étudie la possibilité d'adopter une loi afin de prévoir les recours destinés à l'exécution des ordonnances de garde d'enfants, sur les plans intraprovincial, interprovincial et international:

(A) RECOURS AYANT POUR OBJET D'AIDER À RECOUVRER L'ENFANT:

(i) CONSTITUTION DE SÛRETÉS OU DE CAUTIONNEMENTS

(ii) MANDAT D'ARRÊT - DANS LE CAS OÙ LE PARENT QUI A ENLEVÉ SON ENFANT RISQUE D'ÉCHAPPER À LA COMPÉTENCE JUDICIAIRE DONT IL RELÈVE

(iii) ORDONNANCE ENJOIGNANT AUX AGENTS DE LA PAIX DE RETROUVER ET D'AIDER À RETOURNER L'ENFANT QUI A ÉTÉ ENLEVÉ

(iv) DÉPÔT DE DOCUMENTS DE VOYAGE, TEL LE PASSEPORT

(B) SANCTIONS PÉNALES

(i) EMPRISONNEMENT POUR OUTRAGE AU TRIBUNAL

(ii) AMENDE

Le tableau qui suit identifie les provinces qui ont adopté une loi prévoyant des recours précis visant à faciliter l'exécution des ordonnances de garde d'enfant:

LOI PRÉVOYANT DES RECOURS PRÉCIS VISANT À FACILITER L'EXÉCUTION DES ORDONNANCES DE GARDE D'ENFANT			
	Oui	Non	Observations
Colombie-Britannique	x		
Alberta		x	
Saskatchewan		x	Sera étudié
Manitoba	x		
Ontario	x		
Québec		x	À l'étude
Nouveau-Brunswick	x		À l'exception de la constitution de sûretés ou de cautionnements et du dépôt des documents de voyage
Nouvelle-Écosse		x	À l'étude
Île-du-Prince-Édouard		x	Le mandat d'arrêt est utilisé
Terre-Neuve		x	À l'étude

14. ADOPTION DU PROJET DE LOI UNIFORME SUR L'EXÉCUTION DES ORDONNANCES DE GARDE D'ENFANT, AFIN DE METTRE EN OEUVRE LA CONVENTION INTERNATIONALE DE LA HAYE SUR LES ASPECTS CIVILS DU RAPT D'ENFANT ET D'ÉTENDRE LES PRINCIPES ÉNONCÉS DANS CETTE CONVENTION À L'EXÉCUTION DES ORDONNANCES DE GARDE D'ENFANT À L'INTÉRIEUR D'UNE PROVINCE ET ENTRE LES PROVINCES.

En 1980, la Conférence sur l'uniformisation des lois au Canada a adopté une loi mettant en oeuvre la Convention internationale de La Haye sur les aspects civils du rapt d'enfants. En 1981 la Conférence sur l'uniformisation des lois au Canada a adopté la Loi uniforme sur la compétence judiciaire et l'exécution des jugements en matière de garde des enfants. Ce projet de loi uniforme précise quel tribunal est compétent dans la province, pour entendre les causes en matière de garde d'enfants et il prévoit l'exécution, dans cette province, des ordonnances extraprovinciales de garde d'enfants. Dans ce dernier cas, les recours prévus en matière d'exécution comprennent notamment l'assistance policière visant à assurer le retour de l'enfant qui a été enlevé et il s'agit des mêmes recours que ceux qui sont prévus en matière d'exécution des ordonnances de garde d'enfants à l'intérieur d'une province. Il est recommandé que le gouvernement de chaque province tienne compte de ces deux projets de loi uniforme lorsqu'il s'agira de mettre en oeuvre la Convention de La Haye et d'étendre les principes à l'exécution des ordonnances intraprovinciales et interprovinciales de garde d'enfants.

Le tableau qui suit identifie les provinces qui ont adopté la législation nécessaire à la mise en oeuvre de la Convention de La Haye:

MISE EN OEUVRE DE LA CONVENTION DE LA HAYE			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique	x		En vigueur lors de la ratification
Alberta		x	À l'étude
Saskatchewan		x	Prévue au printemps de 1983
Manitoba	x		En vigueur lors de la ratification
Ontario	x		En vigueur lors de la ratification
Québec		x	À l'étude
Nouveau-Brunswick	x		En vigueur lors de la ratification
Nouvelle-Écosse	x		Pas encore proclamée
Île-du-Prince-Édouard		x	Prévue au printemps de 1983
Terre-Neuve		x	Prévue au printemps de 1983

15. NOMINATION DE SPÉCIALISTES DU DROIT DE LA FAMILLE À LA MAGISTRATURE PROVINCIALE.

Le tableau qui suit identifie les provinces qui nomment des spécialistes du droit de la famille à la magistrature provinciale:

NOMINATION DE SPÉCIALISTES EN DROIT DE LA FAMILLE À LA MAGISTRATURE PROVINCIALE			
	<u>Oui</u>	<u>Non</u>	<u>Observations</u>
Colombie-Britannique		x	
Alberta		x	À l'étude
Saskatchewan		x	À l'étude
Manitoba		x	Prévue en 1983 dans les tribunaux de la famille à juridiction intégrale
Ontario	x		
Québec		x	Sera étudiée si un tribunal de la famille provincial est institué
Nouveau-Brunswick		x	Prévue lors de l'expansion des tribunaux de la famille à juridiction intégrale
Nouvelle-Écosse		x	Sera étudiée
Île-du-Prince-Édouard		x	Sans objet
Terre-Neuve		x	Sans objet

b) Recommandations à l'intention du gouvernement fédéral:

16. MODIFICATION DE L'ARTICLE 15 DE LA LOI SUR LE DIVORCE, AFIN DE PERMETTRE L'ENREGISTREMENT DES ORDONNANCES DE PENSIONS ALIMENTAIRES ET DE GARDE D'ENFANTS PAR UN TRIBUNAL DÉSIGNÉ PAR LES PROVINCES EN SUS OU AU LIEU DE LA COUR SUPÉRIEURE DE CHAQUE PROVINCE.

La mise en oeuvre d'une telle recommandation faciliterait le processus d'exécution en permettant l'enregistrement direct des ordonnances fédérales rendues dans les tribunaux de la famille au Canada, sans qu'il soit nécessaire de passer par une cour supérieure ou d'avoir recours à une loi portant réciprocité ou à toute autre loi provinciale. Une fois enregistrée, l'ordonnance aurait plein effet comme si elle avait été rendue initialement par ce tribunal. Cette modification constituerait une réponse adéquate au courant jurisprudentiel qui a pris naissance à partir de l'affaire Gould v. Gould (Cour d'appel de la Saskatchewan) dans laquelle il a été décidé que le mécanisme actuel de réciprocité entre les provinces ne peut en fait servir à l'exécution de ces ordonnances, puisqu'il s'agit d'un domaine de compétence fédérale. Il faut souligner que cette modification pourrait soulever des difficultés, puisqu'un juge d'une cour provinciale pourrait être appelé à procéder à l'exécution forcée d'une ordonnance émise par une cour supérieure.

Cette recommandation fait l'objet d'études au ministère de la Justice, bien que dans deux provinces (Colombie-Britannique et Saskatchewan), le problème a été éliminé par la modification des règles sur le divorce.

17. MODIFICATION DE L'ARTICLE 11 DE LA LOI SUR LE DIVORCE, AFIN D'AUTORISER LES ORDONNANCES PORTANT PAIEMENT ET GARANTIE DE PAIEMENT D'UNE SOMME GLOBALE OU DE SOMMES ÉCHELONNÉES.

Cette modification constituerait une réponse adéquate au jugement de la Cour suprême du Canada rendu dans l'affaire Nash c. Nash. Cet arrêt où l'on a interprété l'article 11(1) de façon à restreindre les recours judiciaires, a entraîné certaines difficultés quant à l'exécution des pensions alimentaires. Selon cette interprétation, les tribunaux peuvent rendre les ordonnances qui lient personnellement le débiteur alimentaire, mais qui ne peuvent l'obliger à fournir une garantie s'il fait défaut de payer. Le comité est d'avis que la modification de cet article, afin de permettre l'utilisation de ces mesures d'exécution ou de l'une ou l'autre de celle-ci, résoudrait le problème.

Cette recommandation fait actuellement l'objet d'études au ministère de la Justice.

18. NOMINATION DE SPÉCIALISTES DU DROIT DE LA FAMILLE À LA MAGISTRATURE FÉDÉRALE.

Compte tenu du nombre croissant de causes relatives au droit de la famille entendues par les juges nommés par le gouvernement fédéral, celui-ci devrait faire en sorte que les personnes qu'il nomme soient suffisamment informées et intéressées pour être en mesure de régler les conflits familiaux.

Lorsque des postes de juge devront être comblés, le gouvernement fédéral continuera, dans les cas où cela se justifiera, à chercher à identifier les spécialistes en droit de la famille, lorsqu'il étudiera les candidatures à ces postes.

Le gouvernement fédéral reconnaît qu'il est nécessaire de nommer des spécialistes.

19. ADOPTION DU PROJET DE LOI C-38 (LOI SUR LA SAISIE-ARRÊT ET LA DISTRACTION DE PENSIONS).

Le comité a approuvé à l'unanimité le principe et les conséquences pratiques de ce projet de loi qui a été déposé par le gouvernement fédéral et adopté en première lecture le 27 juin 1980. Le projet de loi autoriserait, en application de la loi provinciale, la saisie-arrêt des traitements des fonctionnaires fédéraux aux fins de l'exécution des ordonnances civiles, notamment les ordonnances de pension alimentaire et la distraction des prestations de pension de retraite des anciens fonctionnaires fédéraux, et ce pour assurer l'exécution des ordonnances de soutien financier.

Le projet de loi C-38 a été adopté et a reçu la sanction royale le 22 juin 1982. La partie I de ce projet est entrée en vigueur le 11 mars 1983, alors que la partie II devrait entrer en vigueur plus tard cet été.

20. ADOPTION D'UNE LOI VISANT À PERMETTRE AUX CRÉANCIERS ALIMENTAIRES DE DEMANDER AUX MINISTRES FÉDÉRAUX DE SAISIR OU DE DISTRAIRE LES SOMMES ÉCHUES OU DUES AU DÉBITEUR DE L'OBLIGATION.

Les sommes portées ou devant être portées au crédit du débiteur alimentaire, comme les remboursements d'impôt sur le revenu, les prestations d'assurance-chômage ou de pension pourraient constituer un moyen utile d'acquitter les dettes alimentaires. Ces sommes d'argent ont toujours été insaisissables ou elles ont bénéficié de l'immunité accordée à la Couronne. À la lumière du principe sous-jacent au projet de loi C-38 qui vise à supprimer l'immunité de la Couronne en matière de traitement et de prestations de retraite, le comité a conclu qu'on ne peut être justifié de continuer à enlever aux personnes à charge d'une famille le bénéfice de ces sommes d'argent. On pourrait envisager des exemptions appropriées ou des limites financières dans le but de protéger les besoins financiers du débiteur.

Cette recommandation fait actuellement l'objet d'études au ministère de la Justice. Il faut remarquer, cependant, que le Bill C-38 permet dès maintenant la distraction de certaines prestations de pension.

21. ADOPTION D'UNE LOI EXIGEANT QUE TOUS LES ORGANISMES FÉDÉRAUX ET LES PARTICULIERS ASSUJETTIS À LA LÉGISLATION FÉDÉRALE DIVULGUENT, SUR ORDRE DU TRIBUNAL, L'ADRESSE, LE LIEU DE TRAVAIL OU D'AUTRES RENSEIGNEMENTS PERMETTANT DE RETRACER LES MEMBRES D'UNE MÊME FAMILLE AUX FINS DE DEMANDER OU D'EXÉCUTER DES ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE, D'ENFANT.

La tâche qui incombe au gouvernement de faire respecter les ordonnances judiciaires qui ont pour but d'assurer le bien-être d'une famille doit avoir préséance sur l'obligation de ce même gouvernement de protéger le caractère confidentiel des renseignements qui lui sont transmis par des particuliers. Le défaut de divulguer des renseignements devrait être sanctionné par l'imposition d'une peine sévère pour décourager une telle violation. Le comité avait l'intention d'inclure dans l'expression "organismes fédéraux" les organisations professionnelles et les syndicats fédéraux ainsi que les personnes ayant la garde des banques fédérales de données. La seule restriction que le comité était disposé à recommander prévoyait que les renseignements ne doivent pas être divulgués directement au requérant mais plutôt au tribunal ou à un fonctionnaire désigné. Le comité voulait ainsi s'assurer que les membres d'une même famille ne reçoivent pas de coordonnées directement lorsqu'ils n'ont pas l'intention de présenter une requête pour obtenir une pension alimentaire ou la garde d'enfants. Il a fait remarquer que des dispositions législatives semblables dans les provinces du Manitoba, d'Ontario, du Québec et du Nouveau-Brunswick, de même que les services que l'on appelle "Parent Locator" aux États-Unis, n'ont pas entraîné d'abus. Il a également souligné que le Comité d'action nationale sur la situation de la femme et l'Alberta Institute of Law Research and Reform ont adopté des résolutions qui contiennent une recommandation semblable. Lors de sa session plénière tenue à Vancouver en septembre 1981, l'Association du barreau canadien a rejeté une telle résolution pour le motif qu'elle constituait une atteinte à la protection de la vie privée.

Cette recommandation fait actuellement l'objet d'études au ministère de la Justice.

22. ADOPTION D'UNE LOI LIMITANT L'UTILISATION OU L'ÉMISSION DE PASSEPORTS OU D'AUTRES DOCUMENTS DE VOYAGE RELATIFS AUX ENFANTS.

Le maintien des accords conclus en matière de garde d'enfants a préséance sur le droit des personnes de voyager librement à l'étranger. L'obligation d'obtenir le

consentement des parents ou une ordonnance permettant à l'un ou l'autre des parents de voyager à l'extérieur du Canada en compagnie de son enfant constituerait un moyen particulièrement efficace d'empêcher les rapt d'enfants à l'étranger ou d'en réduire le nombre.

Cette question est présentement étudiée par les fonctionnaires du ministère des Affaires extérieures.

L'émission des passeports canadiens se fait conformément au Décret sur les passeports canadiens (consulter l'annexe F). L'utilité de la présente recommandation est limitée puisque les citoyens canadiens n'ont pas besoin d'un passeport pour quitter le Canada, ni d'ailleurs pour entrer dans plusieurs autres pays (même si, dans certains cas, ils ne sont pas citoyens du pays où ils veulent entrer). D'ailleurs, les enfants dont la garde fait l'objet de disputes internationales ont souvent une double nationalité. Dans les cas où un parent demande l'émission d'un passeport au nom d'un enfant, le ministère des Affaires extérieures exigera l'acceptation de l'autre parent.

23. MODIFICATION DE LA LOI SUR LE DIVORCE, AFIN DE PERMETTRE LA CESSION DES PRESTATIONS DE SOUTIEN FINANCIER À LA COURONNE PROVINCIALE OU À UN MINISTRE FÉDÉRAL.

La mise en oeuvre d'une telle recommandation faciliterait l'exécution des ordonnances alimentaires en transférant aux services sociaux provinciaux le pouvoir de contrôler cette exécution et en permettant aux ministres fédéraux de faire exécuter une ordonnance à même les fonds portés au crédit du débiteur.

Cette recommandation fait actuellement l'objet d'études au ministère de la Justice.

24. MODIFICATION DE L'ARTICLE 11(1) DE LA LOI SUR LE DIVORCE, AFIN DE PRÉVOIR QUE LES OBLIGATIONS ALIMENTAIRES SOIENT AUTOMATIQUEMENT EXÉCUTOIRES À MÊME LA SUCCESSION DU DÉBITEUR, À MOINS QUE LE TRIBUNAL N'EN ORDONNE AUTREMENT.

La mise en oeuvre de cette recommandation résoudrait les difficultés qui découlent de l'exécution des obligations alimentaires contre un débiteur décédé.

Cette recommandation fait actuellement l'objet d'études au ministère de la Justice. Comme ceci pourrait avoir des implications au niveau des lois provinciales sur les successions, il faudra y accorder une attention particulière.

25. MODIFICATION DE L'ARTICLE 11(2) DE LA LOI SUR LE DIVORCE, AFIN DE PERMETTRE LA MODIFICATION DES ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANT DEVANT UN TRIBUNAL AUTRE QUE LE TRIBUNAL INITIAL.

L'article 11(2) de la Loi sur le divorce exige que toute modification apportée à une ordonnance de pension alimentaire ou de garde d'enfants soit soumise au tribunal qui a prononcé le divorce. Cette obligation impose aux deux parties un fardeau considérable en termes de temps et de frais de déplacement lorsqu'elles ont toutes deux déménagées ailleurs au Canada. Le comité est d'avis que la modification résoudrait ces difficultés et permettrait dans une certaine mesure d'empêcher le recours aux modifications comme moyen de s'opposer à l'exécution des ordonnances. Celles-ci pourraient être modifiées par un tribunal autre que le tribunal initial, du consentement des parties ou suivant les principes du "forum conveniens", lorsque les deux parties ne sont plus domiciliées dans les limites de la compétence judiciaire de ce dernier. Il faudrait toujours que la modification soit présentée devant le tribunal initial lorsqu'au moins une des parties continue de résider dans cette province.

Cette recommandation fait actuellement l'objet d'études au ministère de la Justice.

PARTIE II

RECOMMANDATIONS EN VUE D'OBTENIR UNE ACTION CONJOINTE DES GOUVERNEMENTS FÉDÉRAL ET PROVINCIAUX

1. ÉLABORATION DE RÈGLES UNIFORMES, EN VERTU DE LA LOI SUR LE DIVORCE, CONCERNANT L'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANT.

L'article 19(1) de la Loi sur le divorce permet à une cour d'établir des règles de pratique applicables à l'exécution des ordonnances relatives au versement d'une pension alimentaire ou à la garde d'enfant, rendues en conformité avec la Loi sur le divorce. L'article 19(2) de la Loi sur le divorce autorise cependant le gouverneur en conseil à modifier ces règles de façon à harmoniser l'application au Canada. À l'heure actuelle, certaines provinces appliquent un système distinct d'exécution des ordonnances de pension alimentaire ou de garde d'enfant selon qu'elles sont rendues par les tribunaux fédéraux ou provinciaux; d'autres adoptent les règles de procédures provinciales pour les fins de l'exécution de ces deux types d'ordonnances. Le comité est d'avis que les représentants des gouvernements fédéral et provinciaux devraient discuter avec la magistrature, les comités chargés de l'établissement des règles ainsi qu'avec les présidents des sections du droit de la famille de l'Association du barreau canadien aux fins d'examiner les règles actuelles et d'élaborer de nouvelles règles applicables à l'exécution des ordonnances de divorce qui seraient uniformes dans l'ensemble du pays et qui seraient néanmoins compatibles avec les règles d'exécution des ordonnances établies en vertu des lois provinciales. Cette uniformité ferait ressortir les avantages de l'exécution interprovinciale de toutes les ordonnances de pension alimentaire ou de garde d'enfant.

Le comité recommande que les règles sur le divorce soient modifiées afin d'y inclure par renvoi le régime provincial approprié d'exécution de ces ordonnances, d'après le modèle des règles sur le divorce de la province de la Colombie-Britannique (voir l'annexe B), lesquelles comprennent la législation provinciale relative à l'exécution des ordonnances de pension alimentaire.

Le comité recommande en outre que des démarches soient entreprises auprès des autorités de chaque province chargées de l'établissement des règles, afin d'étudier la possibilité d'adopter des règles uniformes en matière de divorce en ce qui concerne l'exécution des ordonnances de pension alimentaire ou de garde d'enfant partout au Canada.

2. UTILISATION ACCRUE DE LA SAISIE-ARRÊT COMME MOYEN
D'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE
RENDUES EN VERTU DE LA LOI SUR LE DIVORCE.

Les méthodes adoptées par les provinces en ce qui a trait à l'utilisation de la saisie-arrêt comme moyen d'exécution se fondent sur les différentes perceptions de l'opportunité du recours automatique à la saisie-arrêt, qu'il y ait eu ou non défaut de paiement, sur la nécessité de l'exposé des motifs dans toutes les circonstances avant de faire droit à l'ordonnance de saisie-arrêt et sur la possibilité d'exécuter une saisie-arrêt d'une province à l'autre ou uniquement à l'intérieur d'une province. Ainsi, on a mis en doute l'opportunité de conférer à une cour supérieure d'une province le pouvoir d'ordonner une saisie-arrêt contre un employeur se trouvant dans une autre province et on a fait état des difficultés qui pourraient découler de l'exécution ou de la modification d'une ordonnance de saisie-arrêt dans la province réceptrice. La mise en oeuvre de la recommandation par voie de modification à la Loi sur le divorce pourrait soulever un problème d'ordre constitutionnel dans la mesure où elle tendrait à empiéter sur la compétence des provinces en matière de "propriété et droits civils" dans la province. Pour cette raison, le comité a conclu qu'il faudrait procéder à la mise en oeuvre en élaborant des règles uniformes d'exécution et en modifiant la Loi sur le divorce et les lois provinciales.

Le comité a le plaisir de constater l'adoption par le Parlement canadien de la Loi sur la saisie-arrêt et la distraction de pensions, qui entrera probablement en vigueur le 1^{er} mars 1983 et qui facilitera l'exécution des ordonnances relatives au versement d'une pension alimentaire partout au Canada, contre les fonctionnaires fédéraux.

Un sous-comité sur la saisie-arrêt a été institué; celui-ci était formé de représentants des provinces de l'Alberta, du Manitoba et du Nouveau-Brunswick ainsi que du Canada (voir annexe C) et a fait les recommandations suivantes:

RECOMMANDATION No. 1:

Toutes les provinces, ainsi que le gouvernement fédéral, devraient adopter une certaine forme de saisie-arrêt continue pour faire exécuter les ordonnances de pension alimentaire. Cette saisie devrait s'appliquer au plus grand nombre possible de dettes et d'obligations financières payables par le tiers-saisi au débiteur.

RECOMMANDATION No. 2:

Selon les membres du sous-comité, d'ici à ce que la recommandation no 1 soit appliquée, bon nombre de moyens peuvent être utilisés pour que l'on ait de plus en plus recours aux dispositions législatives en vigueur sur la saisie-arrêt, quant à l'exécution réciproque des obligations alimentaires. Le sous-comité recommanderait que les documents habituels qui sont envoyés portent à l'attention de la juridiction de réciprocité le fait qu'une demande de saisie-arrêt est amorcée et qu'il serait souhaitable d'utiliser les procédures de saisie permises par la loi actuelle.

RECOMMANDATION No. 3:

Qu'il n'y ait pas de condition préalable quant aux arriérés pour qu'une ordonnance judiciaire de saisie-arrêt puisse être rendue; le comité recommande toutefois que dans les cas où il y a des arriérés, toute saisie ou saisie-arrêt soit amorcée par un processus administratif.

RECOMMANDATION No. 4:

Lorsqu'il y a des arriérés, la tenue d'une audience judiciaire de justification ne devrait pas être exigée avant qu'une saisie ou une saisie-arrêt ne puisse être amorcée. Le comité recommande en outre que, lorsqu'il y a des arriérés, le processus soit amorcé automatiquement par un fonctionnaire administratif, sous réserve du droit du créancier d'exercer un recours judiciaire pour contester la décision du fonctionnaire ou pour demander un redressement.

RECOMMANDATION No 5:

Que l'on ne fixe pas les limites de l'insaisissabilité en matière de saisie-arrêt, sous réserve du droit du débiteur d'exercer un recours judiciaire pour demander un redressement.

RECOMMANDATION No. 6

Il devrait exister un recours judiciaire civil, afin de dédommager et de réintégrer l'employé qui a subi une mesure disciplinaire ou qui a été congédié à cause de la saisie-arrêt de son salaire.

RECOMMANDATION No 7:

La priorité la plus élevée devrait être attribuée à une saisie-arrêt visant à l'exécution d'une ordonnance de pension alimentaire. Les retenues sur salaire devraient être interdites dans la mesure où elles nuisent à l'exécution d'une ordonnance de pension alimentaire.

RECOMMANDATION No 8:

Les principes que le comité recommande en matière de saisie-arrêt devraient, si les ministres les acceptent, être transmis à la Conférence sur l'uniformisation des lois, qui pourrait les insérer dans une loi uniforme.

3. EXAMEN DE LA POSSIBILITÉ DE PARTAGER LE COÛT DE L'AIDE JURIDIQUE EN MATIÈRE CIVILE ENTRE LES GOUVERNEMENTS FÉDÉRAL ET PROVINCIAUX POUR LES FINS DE L'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANT RENDUES EN VERTU DE LA LOI SUR LE DIVORCE.

La question du partage du coût de l'aide juridique en matière civile entre les gouvernements fédéral et provinciaux fait déjà l'objet de discussions dans un autre contexte; le comité est toutefois d'avis que le fait de faciliter l'accessibilité aux services d'aide juridique dans le domaine du droit de la famille lorsqu'il s'agit d'exécution des ordonnances de pension alimentaire ou de garde d'enfant rendues en application de la Loi sur le divorce permettrait aux membres d'une même famille de faire respecter ces ordonnances. Par conséquent, les fonctionnaires chargés d'examiner cette question devraient en poursuivre la discussion.

Les représentants des provinces au sein du comité recommandent la tenue de discussions supplémentaires entre le fédéral et les gouvernements provinciaux relativement au partage du coût de l'aide juridique pour les fins d'exécution des ordonnances de pension alimentaire ou de garde d'enfant rendues en vertu de la Loi sur le divorce.

Les représentants du Manitoba et du Nouveau-Brunswick ont souligné que, dans leurs provinces respectives, les certificats d'aide juridique ne sont pas délivrés pour l'exécution des ordonnances alimentaires rendues dans la province et à l'extérieur de la province, car les services d'un avocat de la Couronne sont assurés à l'égard de ces questions. Cette manière de procéder a permis à leurs gouvernements de réaliser des économies importantes.

4. CRÉATION ET MISE À JOUR DE RÉPERTOIRES a) DES PERSONNES-RESSOURCES POUR LES FINS DE L'EXÉCUTION EXTRAPROVINCIALE DES ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANTS b) DES RÈGLES DE PROCÉDURES ACTUELLES APPLICABLES À L'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANTS ET c) DES STATISTIQUES SUR L'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANT.

La création d'un répertoire des personnes-ressources avec lesquelles on peut communiquer, au niveau fédéral-provincial, lorsque se présentent des questions d'exécution, permettrait d'échanger des points de vue et des renseignements. En outre, un répertoire des règles de procédures actuelles en matière d'exécution permettrait d'adopter des techniques d'exécution efficaces et innovatrices. Les échanges de données statistiques, lorsqu'elles existent pourraient permettre d'identifier les tendances nationales et régionales. La question de la sélection des données statistiques pourrait être confiée au Centre national de la statistique et de l'information judiciaire. Un répertoire des procédures en matière d'exécution et des personnes chargées de leur application a été dressé (voir ci-joint).

Le répertoire ne contient aucune statistique portant sur l'exécution des ordonnances relatives au versement d'une pension alimentaire ou à la garde d'enfants parce que ces données ne sont pas disponibles. Les résultats d'une récente enquête effectuée par le sous-comité sur les renseignements indiquent que les seules données statistiques recueillies en ce qui a trait aux ordonnances de pension alimentaire ou de garde d'enfants, qui comprennent les ordonnances rendues en vertu de la Loi sur le divorce et des lois provinciales, sont conservées par les gouvernements provinciaux. Les renseignements recueillis diffèrent beaucoup d'une province à l'autre car il n'existe, au Canada, aucune uniformité à l'égard des catégories de sujets visés. De plus, la cueillette des données statistiques portant sur les ordonnances de pension alimentaire ou de garde d'enfant est toujours à un stade expérimental, ce qui cause des problèmes, car dans certains cas, il y a absence totale de statistique alors que, dans d'autre cas, on peut avoir accès à des données recueillies dans quelques régions seulement ou à des statistiques s'appliquant à toute la province mais dont la compilation comporte des problèmes particuliers. Cette situation ne permet pas d'interpréter les données. Enfin, les personnes qui sont chargées de recueillir ces renseignements, des greffiers pour la plupart, sont surchargées de travail et n'accordent pas la priorité à la cueillette des données statistiques.

Le comité recommande d'envisager la possibilité de mettre à jour le catalogue chaque année ou d'une manière régulière.

Le comité a en outre recommandé que la question de la cueillette et du classement des données statistiques portant sur l'exécution des ordonnances de pension alimentaire ou de garde d'enfant soit transmise au Centre national de la statistique et de l'information judiciaire pour qu'il l'étudie.

5. ÉLABORATION ET ÉCHANGE DES BANQUES DE DONNÉES FÉDÉRALE ET PROVINCIALES AUX FINS DE REPÉRER LES PARTIES AUX ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANT.

Un tel système pourrait prendre la forme de services connus sous le nom de "Parent Locator" et "Maintenance Defaulter Locator" que l'on trouve actuellement aux États-Unis et dans certaines provinces.

L'élaboration de ces types de services faciliterait la mise en oeuvre de la Convention internationale de La Haye sur les aspects civils du rapt d'enfant.

Le sous-comité sur les renseignements a fait les recommandations suivantes, qui ont été approuvées en bloc par le comité:

- (1) Que le gouvernement du Canada et des provinces s'entendent pour établir un moyen de repérer les parties aux ordonnances de pension alimentaire ou de garde d'enfant.
- (2) Que le contrôle et l'administration de chaque banque de données relèvent du gouvernement qui en est responsable.
- (3) Qu'une personne soit désignée pour recevoir et traiter les demandes des provinces qui appliquent les accords de réciprocité en vue de repérer les parties aux ordonnances de pension alimentaire ou de garde d'enfant.
- (4) Que chaque province permette au moins d'avoir accès aux dossiers sur les permis de conduire et l'immatriculation des véhicules (plusieurs provinces étudient actuellement la possibilité d'appliquer une telle recommandation).
- (5) Que le gouvernement fédéral permette au moins d'avoir accès aux dossiers d'assurance-chômage ou aux dossiers des centres d'emploi du Canada (le ministère de la Justice étudie actuellement la possibilité d'appliquer une telle recommandation).

6. CRÉATION D'UN REGISTRE CENTRAL OÙ SERAIENT INSCRITES LES ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANT RENDUES EN VERTU DE LA LOI SUR LE DIVORCE OU D'UNE LOI PROVINCIALE.

Un registre central pourrait permettre aux tribunaux et aux fonctionnaires chargés de l'exécution des ordonnances de pension alimentaire ou de garde d'enfant de faire le point sur celles-ci. En outre, les renseignements recueillis pourraient servir à la recherche de précédents et à l'établissement de critères appropriés ou uniformes applicables aux ordonnances de pension alimentaire ou de garde d'enfant.

Le sous-comité sur les renseignements a étudié cette recommandation et a conclu que même si le premier objectif pouvait être réalisé, il était peu probable que le deuxième puisse être atteint d'une manière convenable. Certains membres du comité ont mis en doute la validité du deuxième objectif en exprimant l'opinion que des précédents en matière d'octroi de pensions alimentaires ne seraient pas suivis et que les disparités régionales pouvaient justifier les différences dans les niveaux d'octroi. Comme la réalisation du premier objectif était souhaitable, le comité a décidé que cette recommandation devait être retenue afin qu'elle puisse être approfondie, pour en étudier notamment le modèle administratif et la rentabilité.

7. ÉTABLISSEMENT DE VOIES DE COMMUNICATION AVEC LES AUTORITÉS AMÉRICAINES AUX FINS D'EXAMINER LEUR LOI DITE "UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT" ET LEUR SERVICE APPELÉ "PARENT LOCATOR".

Les États-Unis ont adopté une loi connue sous le nom de Uniform Reciprocal Enforcement of Support Act. Compte tenu de l'intérêt croissant pour l'établissement d'un système de réciprocité entre les autorités canadiennes et américaines en matière d'exécution, le comité a conclu que des discussions avec le comité de rédaction de la législation américaine pourraient servir à faciliter l'échange de renseignements et le partage des craintes en ce qui a trait à l'exécution à l'étranger.

Le Comité désire faire savoir que, lors de la Conférence sur l'uniformisation des lois tenue à Montebello (Québec) en août 1982 un représentant de l'Ontario, suivant en cela une recommandation du comité, est entré en contact avec les autorités américaines chargées de l'application du Uniform Reciprocal Enforcement of Support Act.

Les Américains se rendent maintenant compte des faiblesses de la réciprocité entre ceux qui sont régis par le Uniform Reciprocal Enforcement of Support Act et ceux qui le sont par la Loi sur l'exécution réciproque des obligations alimentaires.

Le président du Conseil d'administration de la U.S. National Conference of Commissioners on Uniform State Laws nous a informé que les membres de son conseil étaient disposés à discuter de cette question avec des représentants de la Conférence sur l'uniformisation des lois au Canada.

8. **SPÉCIALISATION ACCRUE DES JUGES DANS LE DOMAINE DU DROIT DE LA FAMILLE, SURTOUT EN CE QUI CONCERNE LE RÔLE DES TRIBUNAUX DE LA FAMILLE À JURIDICTION INTÉGRALE.**
9. **DÉSIGNATION DE REPRÉSENTANTS GOUVERNEMENTAUX CHARGÉS DE SE RENCONTRER À INTERVALLES RÉGULIERS POUR POURSUIVRE LA MISE EN OEUVRE DES RECOMMANDATIONS DU COMITÉ ET DISCUTER DES PROBLÈMES QUI SE PRÉSENTENT EN MATIÈRE D'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANT.**

Les membres du comité sont d'avis qu'un certain nombre de difficultés et de questions relatives à l'exécution ont été résolues dans le cadre de ses réunions et ils ont conclu que les représentants des gouvernements devraient continuer de se rencontrer pour exposer les difficultés qui pourraient se présenter à l'avenir en matière d'exécution.

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ANNEXE "A"

L'EXÉCUTION DES ORDONNANCES
DE PENSION ALIMENTAIRE OU DE GARDE
D'ENFANTS AU MANITOBA

COMITÉ FÉDÉRAL-PROVINCIAL SUR L'EXÉCUTION AU CANADA DES
ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANT,
Toronto, 10 et 11 août 1981.

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PROGRAMME DE L'OBLIGATION ALIMENTAIRE

Le 1er janvier 1980, le nouveau programme d'exécution de l'obligation alimentaire sera implanté au Manitoba et toutes les modifications afférentes à la Loi sur l'obligation alimentaire du Manitoba qui ont été adoptées lors de la session de 1979 seront en vigueur. Ces modifications prévoient l'application d'office des dispositions relatives à l'exécution de toutes les ordonnances rendues après le 1er janvier 1980, conformément à la Loi sur la protection de l'enfance et à la Loi sur l'obligation alimentaire, ainsi qu'à toutes les ordonnances enregistrées en vertu de la Loi sur l'exécution réciproque des ordonnances alimentaires après le 1er janvier 1980. Si le bénéficiaire de l'obligation alimentaire ne souhaite pas qu'une ordonnance soit intégrée au programme d'exécution, il est nécessaire que cette personne dépose un formulaire à cet effet auprès du fonctionnaire désigné. Parmi les principaux aspects du programme, citons l'existence d'un système informatisé de contrôle du paiement des pensions alimentaires, pour toutes les ordonnances enregistrées dans le programme.

Les ordonnances existantes prises en vertu de la Loi sur l'obligation alimentaire, de la Loi sur la protection de l'enfance et de la Loi sur le divorce qui sont actuellement confiées au bureau d'exécution du Tribunal de la famille seront intégrées au système informatisé de contrôle, en janvier 1980 et, en cas de défaut, les procédures automatiques s'appliqueront à ces ordonnances.

Quant à toute ordonnance de soutien qui ne serait pas actuellement confiée au bureau d'exécution et qui serait prise en vertu de la Loi sur la protection de l'enfance, de la Loi sur l'obligation alimentaire, ou enregistrée en vertu de la Loi sur l'exécution réciproque des ordonnances alimentaires, il suffit au bénéficiaire de déposer, auprès du fonctionnaire désigné, une déclaration visant à faire enregistrer cette ordonnance dans le programme d'exécution, conformément à l'article 31.2(2) de la Loi sur l'obligation alimentaire.

Toute ordonnance existante prise conformément à la Loi sur le divorce et qui n'est pas confiée au bureau d'exécution peut être intégrée au programme par le biais d'une demande adressée à la Cour du Banc de la reine, en conformité de l'article 31.3 de la Loi sur l'obligation alimentaire et les dispositions d'exécution automatique lui sont alors applicables.

En ce qui concerne les ordonnances rendues après le 1er janvier 1980, conformément à la Loi sur le divorce et à toute autre loi mis à part la Loi sur l'obligation alimentaire, la Loi sur la protection de l'enfance ou la

Loi sur l'exécution réciproque des ordonnances alimentaires, il est nécessaire d'adresser une demande à la Cour ayant rendu ces ordonnances, en vertu de l'article 31.3 et de demander l'application des dispositions sur l'exécution automatique. Si la Cour du Banc de la reine prend de telles dispositions, l'ordonnance est alors déposée à la Cour des juges provinciaux (division de la famille) afin d'être exécutée.

Le nouveau système informatisé impose que tous les paiements soient faits au conjoint bénéficiaire et envoyés au bureau du tribunal approprié. Tous les comptes enregistrés dans le programme feront l'objet d'un contrôle régulier par ordinateur, lequel sera centralisé à la Cour des juges provinciaux (division de la famille) à Winnipeg. Bien que l'ordinateur soit situé au Tribunal de la famille à Winnipeg, tous les versements de pension alimentaire seront faits auprès du bureau du tribunal local, lequel enregistrera le paiement et l'enverra immédiatement au conjoint bénéficiaire, et se chargera de l'acheminement des données vers l'ordinateur central à Winnipeg, à des fins de contrôle.

Si les versements n'étaient pas suffisants, des mesures automatiques d'exécution seraient immédiatement prises. On entend par "exécution automatique" le fait que le bénéficiaire n'ait pas à demander au fonctionnaire désigné que soit exécuté le défaut. Lorsque l'ordinateur indique au fonctionnaire désigné que le compte est en souffrance, ce fonctionnaire doit prendre des mesures d'exécution, en vertu des pouvoirs étendus que lui confère l'article 31.1 (10) de la loi:

"...le fonctionnaire désigné peut prendre une ou plusieurs mesures, notamment:

- a) Des procédures en vue de réaliser le cautionnement ou le dépôt de garantie en vertu de l'article 25;
- b) Des procédures visant à imposer des pénalités aux termes de l'article 26;
- c) L'inscription de l'ordonnance au bureau d'enregistrement des titres fonciers et l'institution d'une action en vertu de la Loi sur les jugements afin de faire appliquer l'enregistrement;
- d) L'émission d'une ordonnance de saisie-arrêt en vertu de la Loi sur la saisie-arrêt ou d'un bref d'exécution en vertu de la Loi sur l'exécution des jugements;

- e) La nomination d'un séquestre conformément à l'article 31."

Les modifications apportées récemment à la Loi sur l'obligation alimentaire traitent aussi de situations relatives à des versements d'assurance sociale en vertu de la Loi sur le secours social. Lorsqu'une personne en faveur de laquelle une ordonnance de pension alimentaire a été prise reçoit de l'aide sociale en vertu de la Loi sur le secours social, mais ne souhaite pas faire exécuter l'ordonnance, l'article 31.2(4) de la Loi sur l'obligation alimentaire s'applique et les ordonnances de soutien font l'objet d'un contrôle et d'une exécution en vertu de la Loi sur l'obligation alimentaire tant que leur bénéficiaire reçoit de l'aide sociale.

Dans le cas d'une famille assistée et en l'absence d'une ordonnance de pension alimentaire, malgré le fait que le père soit dans une situation financière propice pour contribuer au soutien de sa famille, et si la mère refuse de demander une ordonnance de pension alimentaire à la Cour, le gouvernement du Manitoba intentera des poursuites judiciaires au nom de la famille pour demander le soutien, conformément à l'article 7(5) de la Loi sur le secours social.

Pour toutes questions à propos du nouveau programme d'obligation alimentaire, prière de s'adresser à:

Robyn Moglove Diamond
Departmental Solicitor
Civil Litigation Branch
Department of the Attorney General
6th floor, Woodsworth Building
405 Broadway Avenue
Winnipeg, Manitoba
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** En-têtes et renvois: The Manitoba Bar Newsletter, janvier 1980.

FAMILY MAINTENANCE ACT OF MANITOBA

PART IV: ENFORCEMENT OF ORDERS

PART IV

ENFORCEMENT OF ORDERS

Security deposit or bond.

25 (1) An order made under this Act may require the person against whom it is made

- (a) to deposit a specified amount in court, or with such person as the court making the order deems fit, to be held as security and for use in the event of default or in the event of any subsequent order increasing the amount of any payment required to be made under the order; or
- (b) to enter into a bond in a specified amount, with or without sureties who shall severally justify and be approved by the court making the order, conditioned for the fulfilment of the order; or
- (c) to provide some other security for the payment of any amount required to be paid under the order.

DECEMBER, 1980

FAMILY MAINTENANCE

S.M. 1978, c. 25 — Cap. F20

Disposition of security.

25 (2) Where a person deposits an amount as security under subsection (1), any balance thereof remaining undisbursed upon the discharge of the order shall be returned to the person together with interest and less such necessary administration costs as the court deems fit.

Imprisonment for default in security.

25 (3) Where a person fails to make a deposit or to enter into a bond pursuant to an order under subsection (1), the court that made the order may order the person to be imprisoned for such period of time not exceeding 30 days as the court may direct, there to remain unless and until the deposit is made or the bond is entered into, as the case may be.

S.M. 1978, c. 25, s. 25.

Penalty for default.

26 (1) A person who fails to comply with a provision of this Part or with a provision of an order or interim order made under this Act is liable to a fine of not more than \$500.00 or to imprisonment for a term of not more than 30 days or to both the fine and the imprisonment, as a court may under subsection (2) or (3) order.

En. S.M. 1979, c. 38, s. 1.

Order to appear and imposition of penalty.

26 (2) Upon an application therefor, a court may order a person alleged to have failed to comply with a provision of this Part or with a provision of an order or interim order made under this Act to appear or to be brought before it for the purpose of answering to the allegation and, when the person is before the court and if the court is satisfied that the person has failed to comply with the provision, may by order impose any of the penalties provided in subsection (1).

En. S.M. 1979, c. 38, s. 1.

Imposition of penalty without order to appear.

26 (3) Where a person is before a court for any purpose under this Act but other than under subsection (2), the court if satisfied that the person has failed to comply with a provision of this Part or with a provision of an order or interim order made under this Act may there and then by order impose any of the penalties provided in subsection (1).

En. S.M. 1979, c. 38, s. 1.

Service of order to appear.

26 (4) An order to appear before a court under subsection (2) shall be served personally or in such other manner as the court may direct.

En. S.M. 1979, c. 38, s. 1.

Filing order in Land Titles Office.

27 An order for support and maintenance or other payments made under this Act may be registered in any Land Titles Office in the province and, if so registered, is an order to which sections 9 and 21 of The Judgments Act apply.

S.M. 1978, c. 25, s. 27; Am. S.M. 1980, c. 54, s. 2.

S.M. 1978, c. 25 — Cap. F20

FAMILY MAINTENANCE

28 Repealed. S.M. 1980, c. 54, s. 3.

Exemptions under Executions Act and Judgments Act.

29 The exemptions provided by The Executions Act and The Judgments Act do not apply with respect to any process issued by a court to enforce an order for payment made under this Act.

S.M. 1978, c. 25, s. 29.

Application of Garnishment Act.

30 The Garnishment Act applies with respect to any garnishment issued to enforce an order for payment made under this Act.

S.M. 1978, c. 25, s. 30.

Appointment of receiver.

31 (1) Where there is default in respect of an order for payment made under this Act, a court upon an application made by or on behalf of the person in whose favour the order was made may appoint a receiver of any moneys due, owing or payable, or to become due, owing or payable to, or earned or to be earned by, the person against whom the order was made to the extent of the default and, in addition, to the extent of any instalments due or to become due under the order.

Appointment of receiver without formal application.

31 (2) Where a person is before a court for any purpose under this Act but other than pursuant to an application under subsection (1), the court, if satisfied that the person is in default in respect of an order or interim order for payment made under this Act, may there and then and notwithstanding the requirement for an application under subsection (1) appoint the receiver for whom provision is made in that subsection.

En. S.M. 1979, c. 38, s. 1.1.

Exemptions under Garnishment Act.

31 (3) Where a receiver is appointed under this section, the wages of the person against whom the order was made are exempt to the extent set out in The Garnishment Act, and that Act applies to the order appointing the receiver as though it were a garnishing order.

Am. S.M. 1979, c. 38, s. 1.1.

S.M. 1978, c. 25, s. 31; Am. S.M. 1979, c. 38, s. 1.1.

Subject to sec. 31.2.

31.1 (1) This section is subject to section 31.2.

En. S.M. 1979, c. 38, s. 2.

Definitions.

31.1 (2) In this section and in section 31.2,

(a) "designated officer" means a person employed under The Civil Service Act and designated by the Attorney-General for the purposes of this section;

FAMILY MAINTENANCE

S.M. 1978, c. 25 — Cap. F20

(b) "order" means, as the case may require,

- (i) an order or interim order for payment made under this Act or The Child Welfare Act, or
- (ii) a maintenance order made in a jurisdiction outside of Manitoba and registered or confirmed within Manitoba under The Reciprocal Enforcement of Maintenance Orders Act.

En. S.M. 1979, c. 38, s. 2.

Remittance of payments to designated officer.

31.1 (3) The person required to make the payments under an order shall remit each payment to the designated officer and the designated officer, after receiving and recording the payment, shall forward the payment to the person entitled to receive it.

En. S.M. 1979, c. 38, s. 2.

Records.

31.1 (4) The designated officer shall make and maintain such records of orders, and of payments received and forwarded under subsection (3) in respect of those orders, and such other records as will enable him to ascertain with reasonable dispatch the occurrence of any default in payment under the orders.

En. S.M. 1979, c. 38, s. 2.

Action in cases of default.

31.1 (5) Where the designated officer ascertains that default in payment has occurred under an order, he shall take such lawful steps as he deems requisite for the purpose of enforcing payment of the amount in default.

En. S.M. 1979, c. 38, s. 2.

Initial enforcement measures.

31.1 (6) In the course of steps taken under subsection (5) but without restricting the generality of that subsection, the designated officer may

- (a) take investigative measures to ascertain the whereabouts, place of employment, income and assets of the person in default;
- (b) by written notice mailed by ordinary mail to or served personally upon the person in default, notify the person that, unless the amount in default is paid within a time stated in the notice, one or more of the proceedings or remedies set out in subsections (9) and (10) may be taken to enforce payment.

En. S.M. 1979, c. 38, s. 2.

Information from various sources.

31.1 (7) In the course of investigative measures taken under clause (6) (a), the designated officer may require any person, the government or any agency of the government to disclose to the designated officer any particulars of the address of the person in default that it may have in its possession or control, and the person, government or agency of the government shall disclose the particulars to the designated officer upon being required to do so, notwithstanding anything to the contrary in any other Act of the Legislature.

En. S.M. 1979, c. 38, s. 2.

S.M. 1978, c. 25 — Cap. F20

FAMILY MAINTENANCE

Crown bound.

31.1 (8) Subsection (7) is binding upon the Crown.

En. S.M. 1979, c. 38, s. 2.

Default hearing and financial statement.

31.1 (9) In the course of steps taken under subsection (5) but without restricting the generality of that subsection and whether or not a notice is given under clause (6) (b), the designated officer may, by written notice mailed by ordinary mail to or served personally upon the person in default, require the person

- (a) to appear at a hearing to be held before a court at a time and place stated in the notice, there to be examined under oath in respect of the default and in respect of the employment, income, assets and financial circumstances of the person; and
- (b) at or before the commencement of the hearing, to prepare and file with the court a sworn financial statement in a form satisfactory to the designated officer and containing particulars as to the employment, income, assets and financial circumstances of the person;

and the person shall appear and shall prepare and file the financial statement in accordance with the notice.

En. S.M. 1980, c. 54, s. 4.

Certificate of designated officer.

31.1 (9.1) At any hearing held in a proceeding under subsection (9) or under any other provision of this Act, a computer print-out

- (a) showing, as of the date of the print-out, the state of the account, as between the parties to the proceeding, in respect of the payments required to be made by one party to the other pursuant to an order; and
- (b) certified by the designated officer as being a true copy of the record in respect of the state of that account as of that date;

is admissible in evidence, on behalf of either party, as prima facie proof of the state of the account, without prior notice to the other party of the intention to submit the print-out in evidence at the hearing and without proof of the signature of the designated officer on the certificate.

En. S.M. 1980, c. 54, s. 4.

Enforcement proceedings.

31.1 (10) In the course of steps taken under subsection (5), but without restricting the generality of that subsection and whether or not a notice is given under clause (6) (b) or a notice is given or the person in default appears under subsection (9), the designated officer may initiate one or more of the following proceedings:

- (a) Proceedings to realize upon any bond or security deposited under section 25.
- (b) Proceedings for the imposition of the penalties provided in section 26.
- (c) Registration of the order in a land titles office under section 27 and the taking of proceedings under The Judgments Act in pursuance of the registration.
- (d) The issuance of a garnishing order.
- (e) The issuance of a writ of execution.
- (f) The appointment of a receiver under section 31.

En. S.M. 1979, c. 38, s. 2; Am. S.M. 1980, c. 54, s. 5.

S.M. 1979, c. 38, s. 2; Am. S.M. 1980, c. 54, ss. 4 & 5.

FAMILY MAINTENANCE

S.M. 1978, c. 25 — Cap. F20

Automatic application of enforcement provisions.

31.2 (1) The provisions of section 31.1 apply in the case of any order, other than an order for the payment of a lump sum, made after that section comes into force, unless the person entitled to receive the payments thereunder signs and files with the designated officer a statement in a form satisfactory to the designated officer indicating that those provisions shall not apply in the case of that order and in that event the provisions cease to apply upon the filing of the statement.

En. S.M. 1979, c. 38, s. 2.

Non-application to prior orders or lump sum orders.

31.2 (2) The provisions of section 31.1 do not apply in the case of any order made before that section comes into force or in the case of any order for the payment of a lump sum whenever made, unless the person entitled to receive the payments thereunder signs and files with the designated officer a statement in a form satisfactory to the designated officer indicating that those provisions shall apply in the case of that order and in that event the provisions become applicable upon the filing of the statement.

En. S.M. 1979, c. 38, s. 2.

Subsequent opting into or out of enforcement provisions.

31.2 (3) A person who signs and files a statement under subsection (1) or (2) in respect of an order may subsequently, at any time and from time to time, sign and file a further statement in respect of the order indicating that the provisions of section 31.1 shall apply or shall not apply to the order, as the case may be, and upon the filing of each further statement those provisions become applicable or cease to apply to the order, as the statement may indicate.

En. S.M. 1979, c. 38, s. 2.

Statement by Director of Social Services.

31.2 (4) Where a person in whose favour an order was made is receiving social allowances or assistance under The Social Allowances Act, the Executive Director of Social Services appointed under The Social Services Administration Act or a person acting under his authority shall sign and file a statement under this section indicating that the provisions of section 31.1 shall apply in the case of that order, and upon the filing of the statement those provisions if not already applicable to the order under this section become applicable and, notwithstanding anything herein to the contrary, remain applicable so long as the person in whose favour the order was made continues to receive the social allowances or assistance.

En. S.M. 1979, c. 38, s. 2.

Default under Divorce Act orders, etc.

31.3 In the case of an order or interim order for alimony, alimentary pension or maintenance payments made by a court otherwise than under this Act or The Child Welfare Act, the court may make all or any of the provisions of sections 31.1 and 31.2 applicable thereto, *mutatis mutandis*.

En. S.M. 1979, c. 38, s. 2.

S.M. 1978, c. 25 — Cap. F20

FAMILY MAINTENANCE

Definitions.

31.4 In this section and in sections 31.5 and 31.6

- (a) "maintenance debtor" means a person who is required under a maintenance order to pay maintenance to or for the benefit of another person;
- (b) "maintenance order" means an order made under this Act, under The Child Welfare Act or under The Wives' and Children's Maintenance Act, now repealed, requiring a person to make periodic payments for maintenance to or for the benefit of another person;
- (c) "recipient" means the person to whom or for whose benefit a maintenance debtor is required to pay maintenance under a maintenance order.

En. S.M. 1980, c. 21, s. 2.

No limitation on arrears.

31.5 (1) Subject to section 31.6, there is no limitation as to time on a recovery of periodic payments of maintenance in default under a maintenance order.

En. S.M. 1980, c. 21, s. 2.

Death of maintenance debtor.

31.5 (2) Where a maintenance debtor under a maintenance order dies and at the time of death any maintenance payments payable under the order are in default, the amount in default is, subject to section 31.6, a debt of the estate of the maintenance debtor and recoverable by the recipient under the maintenance order in the same manner as any other debt recoverable from the estate.

En. S.M. 1980, c. 21, s. 2.

Death of recipient.

31.5 (3) Where the recipient under a maintenance order dies, the personal representative of the deceased recipient may, subject to section 31.6, recover for the estate of the deceased recipient any payments under the maintenance order that are in default at the time of the death of the recipient.

En. S.M. 1980, c. 21, s. 2.

Remission of maintenance payments.

31.6 Where maintenance payments under a maintenance order are in default, a judge of the court that made the maintenance order may, on application, relieve the maintenance debtor or the estate of the maintenance debtor of the obligation to pay the whole or part of the amount in default if the judge is satisfied

- (a) that, having regard to the interests of the maintenance debtor or the estate of the maintenance debtor, as the case may be, it would be grossly unfair and inequitable not to do so; and
- (b) that, having regard to the interests of the recipient or the estate of the recipient, as the case may be, it is justified.

En. S.M. 1980, c. 21, s. 2.

DECEMBER, 1980

DATE: June 27, 1980

**NEW FAMILY MAINTENANCE
ENFORCEMENT EFFECTIVE**

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**Mercier Says System
Improves Compliance**

Maintenance payments received through the province's family maintenance enforcement program have more than doubled for the month of May, 1980, over May, 1979, as a result of a new computerized monitoring and enforcement procedure, according to statistics released by Attorney General Gerry Mercier.

Mr. Mercier noted that maintenance payments rose to \$541,917 in May, 1980, from \$225,675 in May, 1979. The Attorney General said the new system is considered "the most sophisticated and progressive in the country" and has been studied by other jurisdictions.

The system has proven so effective that last month all of the 3,000 maintenance orders on the system were being enforced under the program, where in May of 1979 only 850 of a total 1,400 maintenance orders monitored by the courts were actually being enforced.

Under this system, implemented last January, all maintenance orders issued by the courts under provincial legislation are automatically placed within the enforcement program. Furthermore, any existing order, including divorce orders, not already in the program can be included by contacting a court officer of the Family Court (in Winnipeg, telephone 895-5010).

The main feature of the program is a computerized system for monitoring maintenance payments and providing automatic enforcement in the event of default, without the dependent spouse being required to take any action. Mr. Mercier said that while this system is the most sophisticated in Canada, the rental cost of equipment amounts only to \$1,100 per month.

As part of the Maintenance Enforcement Program, all orders payable to spouses in receipt of social allowance benefits have been put into the program for enforcement. The amendment to the Family Maintenance Act provides that the monitoring and enforcement proceedings are applicable to these orders as long as the family continues to receive social allowance benefits.

NEW FAMILY MAINTENANCE

Mr. Mercier emphasized that the program recognizes the basic responsibility of parents to provide for their children even where parents are not living together. He also re-iterated his previous position that the tax-payer should not have to pay for the maintenance of a family where parents are financially able to provide for their children.

The statistics for May, 1980, reveal that there had been an increase of \$33,219 (from \$30,326.45 in May, 1979 to \$63,545.65 in May, 1980) paid for individuals through the court who receive social allowance benefits. This amount reflects an actual dollars savings to the government in regard to the program expenditures, he pointed out.

"The computerized system provides early detection of default within two working days after a maintenance payment is due. The advantage of this system is that it provides for enforcement proceedings to begin within a month of the first default. Under the previous system, arrears accumulated over an average of six months before enforcement proceedings were initiated and, even then, orders were not always enforced."

To secure payment in cases of default, court officers now have the legislative authority to garnishee wages. If garnishment is not sufficient to meet the default, the defaulting spouse can be brought into court.

Mr. Mercier pointed out that "my department now provides representation without cost at these hearings in Winnipeg on behalf of the creditor spouse."

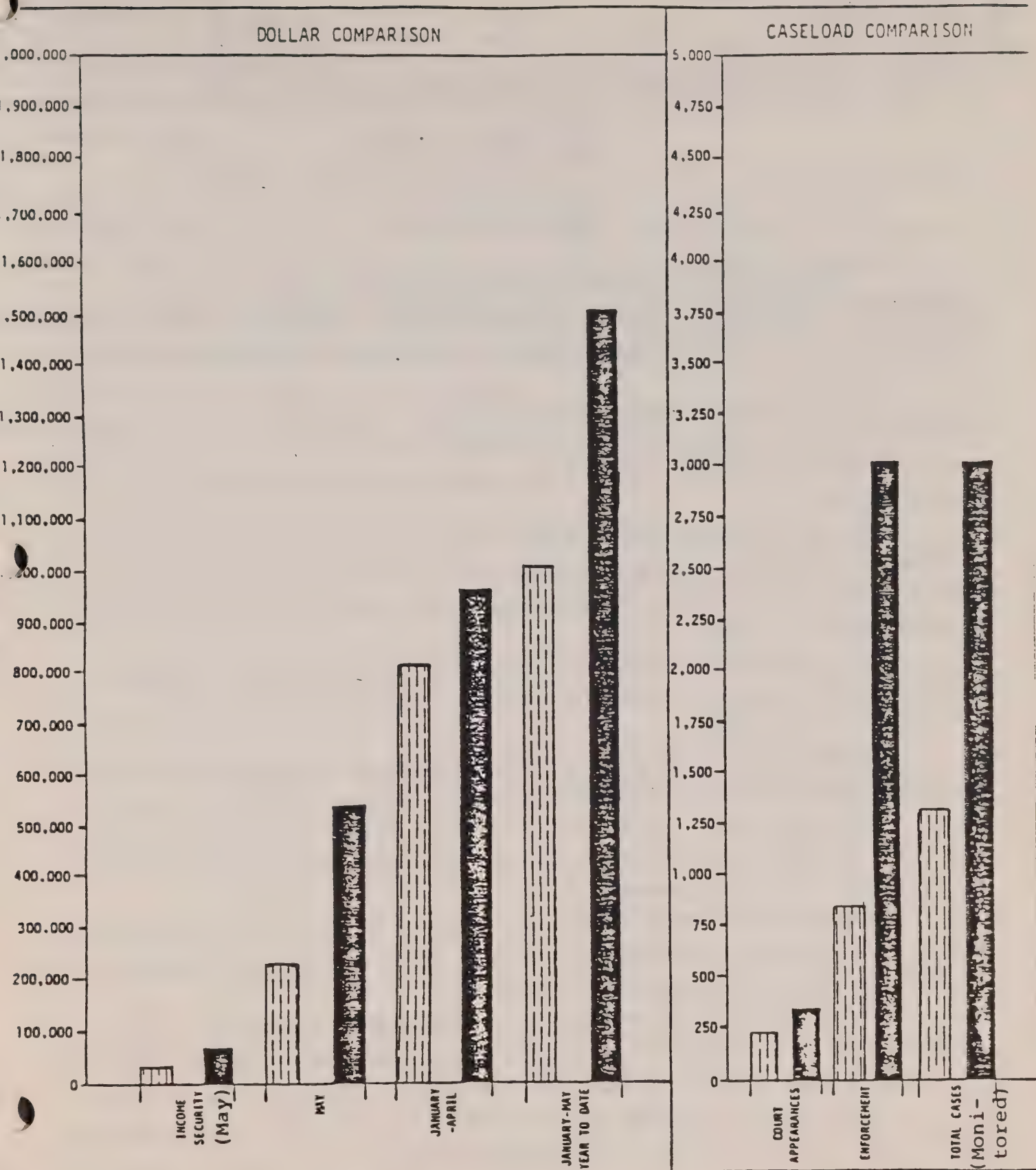
Noting that federal public servants are not currently subject to provincial garnishment laws, Mr. Mercier has requested federal Justice Minister Jean Chretien to introduce legislation to permit the garnishment of their wages. Mr. Chretien has confirmed that he will very shortly introduce such legislation.

Stressing Manitoba's determination to secure enforcement of all maintenance orders wherever the defaulting spouse may reside, Mr. Mercier pointed out that this province has reciprocal enforcement of maintenance orders agreements with more foreign jurisdictions than any other province and is continuing to work towards an increase in such agreements.

"We have also prompted and encouraged other provinces to honor Manitoba maintenance orders to the same extent that Manitoba honors theirs," he said.

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 MAINTENANCE ENFORCEMENT PROGRAM
 STATISTICAL COMPARISON CHART

January to May 31st



MANUAL SYSTEM 1979



COMPUTER SYSTEM 1980

DATE: December 12, 1980

**MAINTENANCE PAYMENTS
SHOW SUBSTANTIAL RISE**

- - -

**Computerized System
Boosts Compliance**

Maintenance payments received through Manitoba's family maintenance enforcement program rose by 70 per cent during the first 10 months of 1980 over the same period in the previous year, according to statistics released by Attorney General Gerry Mercier.

Attributing the increase to the province's implementation of a new computerized monitoring and enforcement procedure, the attorney general pointed out that payments rose from \$2,228,923 between January 1 to October 31, 1979 to \$3,797,187 in the same period this year.

The new system has proven so effective that last month all of the 3,836 maintenance orders on the system were being enforced under the program whereas in October, 1979 only 850 of the 1,400 maintenance orders being monitored by the courts were actually being enforced.

Mr. Mercier said that as part of the maintenance enforcement program all orders payable to spouses in receipt of social allowance benefits have been put into the program for enforcement.

He said this largely accounts for the 83-per-cent increase in the amount of maintenance payments paid by individuals to dependent spouses, children or parents between the periods January 1 to October 31, 1979 and January 1 to October 31, 1980. Maintenance payments rose from \$199,084 to \$364,856 -- representing, said Mr. Mercier, "an actual dollar saving to taxpayers."

Although the system is the most sophisticated in Canada, the attorney general said, the new computerized monitoring enforcement system is relatively inexpensive, with the equipment costing only about \$1,300 per month.

"The computerized system," he said, "provides early detection of default within four working days after a maintenance payment is due and provides for enforcement proceedings to begin within a month of the first default. Under the previous system, arrears accumulated over an average of six months before enforcement proceedings were initiated and, even then, orders were not always enforced."

To secure payment in cases of default, court officers now have the legislative authority to garnishee wages. If this is not sufficient to meet the default, the defaulting spouse may be brought into court, without any expenses accruing to the dependent spouse.

To maximize coverage, all maintenance orders issued by courts under provincial legislation are automatically placed within the enforcement program. Any existing order, including divorce orders, not already in the program can be included by contacting a court officer of the family court (in Winnipeg the telephone number is 895-5010).

Stressing Manitoba's determination to secure enforcement of all maintenance orders wherever the defaulting spouse may reside, Mr. Mercier pointed out that Manitoba has reciprocal arrangements with 61 jurisdictions and is continuing to work towards an increase in the number of such agreements.

Civil Abduction: The Role of the Manitoba Attorney-General's Department*

Robyn Moglove Diamond
Crown Solicitor

*This article is from a position paper, on a resolution dealing with civil abduction presented by Ms. Diamond, to the 62nd annual meeting of the Canadian Bar Association in Montreal, Quebec on August 28th, 1980.

The Extra Provincial Custody Orders Enforcement Act is a Uniform Act adopted by the Uniform Law Conference of Canada in 1974 and has been enacted by all Provinces with the exception of Quebec and Ontario. The Act provides that a court will, on an application, enforce a custody order made in another state or province unless it is satisfied either,

- (a) that the child did not have a real and substantial connection with the State that made the Order at the time the Order was made or,
- (b) that serious harm to the child would result if the Order were to be varied.

In the latter situation, the Court is empowered to vary the Order of the other Province and make such an Order for Custody as it considers necessary. The Act accords the power to vary the Custody Order of another Province if the Court is satisfied,

- (a) that the child does not have a real and substantial connection with the States in which the original order was made or last enforced, and
- (b) that the child has a real and substantial connection with the Province to which the child has been taken to, and that all parties affected by the custody order are now in the other province.

Section 15 of *The Divorce Act* provides that any Custody Order made pursuant to *The Divorce Act* may be enforced in any other Superior Court in Canada.

The Department of the Attorney-General for the Province of Manitoba provides Crown Counsel in cases of child abduction to represent custodial parents in the civil enforcement of foreign custody orders pursuant to either the *Extra Provincial Custody Orders Enforcement Act* or Section 15 of *The Divorce Act*.

It is the opinion of the Manitoba

Department of the Attorney-General, that for the *Extra Provincial Custody Orders Enforcement Act* and for Section 15 of *The Divorce Act* as it effects foreign Custody Orders to have any real effect, it is necessary for the Attorney-General's Department to provide legal counsel in such situations.

As a result, on March 14th, 1979 the Department wrote to the Deputy Attorneys-General of the other Provinces in Canada setting out our rule and requested that they provide a similar service. Three provinces replied with negative responses and six ignored the requests to date.

Despite the lack of response by the other Provinces, our Department does provide legal counsel to custodial parents where the non-custodial parent abducts the child into Manitoba for purposes of enforcing Foreign Custody Orders. Our Department has taken the position that this is a logical extension of the legal services provided by our Department and other Attorney-General's Departments under *The Reciprocal Enforcement of Maintenance Orders Legislation*.

By the Departments' direct involvement in the Civil Enforcement of Custody Orders a system of co-operation has developed between our Department, the Police Department, the Childrens Aid Societies and the Courts with regard to these type of cases. It has been the experience that providing assistance to foreign custodial parents enables quick enforcement of Orders as well as the foreign custodial parent not having to incur any expenses with regard to engaging the services of a private detective or a lawyer in Manitoba to enforce the legal right of custody. Involving the Crown expedites these matters by the easy assessability to the Courts and Police Departments, and has resulted in quick returns of abducted children.

The Attorney General's Department, rather than Legal Aid should be responsible for enforcement of foreign custody orders. Financial circumstances should not dictate whether the government of each state becomes involved for purposes of enforcing foreign custody orders. The urgency of having the matters dealt with as quickly and expeditiously as possible dictate that the

Crown be involved. Using Legal Aid could involve months of processing the application. Economics should not be a consideration when the interest of an abducted child is at stake.

The lack of response from the other Departments of the Attorneys-General precipitated the Manitoba Bar Association passing a resolution on April 26th, 1980 requesting that the Canadian Bar Association approach the respective Attorneys-General in the other Provinces to adopt the procedure now followed in Manitoba and become similarly involved in cases of civil abduction and that the legislation and procedures relating to civil abduction be consistent and uniform throughout Canada.

Canadian Bar Table Resolution by a vote of 52-33. The Resolution follows:

Resolution

WHEREAS the Department of the Attorney General for the Province of Manitoba provides Crown Counsel in cases of child abduction to represent custodial parents in the civil enforcement of Foreign Custody Orders pursuant to either *The Extra-Provincial Custody Orders Enforcement Act* or Section 15 of *The Divorce Act*;

AND WHEREAS the Departments of the Attorney General for the other Provinces in Canada do not provide a similar service;

AND WHEREAS the Family Law Subsection of the Manitoba Branch of the Canadian Bar Association has endorsed and approved the role taken by the Department of the Attorney General for the Province of Manitoba in cases of child abduction;

IT IS THEREFORE moved that the Canadian Bar Association approach the Provincial Attorney's General to adopt the procedure now followed in Manitoba and become similarly involved in cases of civil abduction, and that the Legislation and procedures relating to civil abduction be consistent and uniform throughout Canada.

* Crown Counsel's Review, October, 1980.

PROPOSITION DU MANITOBA EN VUE D'UN
SYSTÈME D'EXÉCUTION A L'ECHELLE NATIONALE

LE MANITOBA RECOMMANDE QUE LA COMPÉTENCE FÉDÉRALE ACTUELLE EN MATIÈRE DE DIVORCE SOIT NON SEULEMENT CONSERVÉE, MAIS ENCORE ÉTENDUE AFIN D'INCLURE UNE COMPÉTENCE CONCURRENTÉ ET SUPÉRIEURE POUR QUE TOUTES LES ORDONNANCES DE SOUTIEN ET DE GARDE PUISSENT ÊTRE CONTRÔLÉES ET EXÉCUTÉES, QU'ELLES AIENT ÉTÉ PRISES EN VERTU DE LOIS PROVINCIALES OU FÉDÉRALES.

Avec la prolifération des séparations et des divorces, ainsi que la mobilité accrue de la population à travers les provinces, il est essentiel d'établir des critères uniformes à propos de la reconnaissance et de l'exécution des ordonnances de pension alimentaire et de garde, si l'on veut que ces ordonnances aient un effet pratique.

Le Manitoba accorde une très grande importance à l'exécution ferme et cohérente des ordonnances de pension alimentaire et de garde. Bien que la plupart des provinces aient adopté une législation uniforme d'exécution réciproque en la matière, on trouve de graves incohérences dans les règles, la pratique et la procédure suivies dans tout le Canada, ce qui aboutit à un système peu efficace, voire inexistant, d'exécution. Par exemple, en vertu du programme informatisé d'exécution des ordonnances alimentaires récemment mis en oeuvre au Manitoba, toutes les ordonnances de pension alimentaire, qu'elles soient rendues en vertu de lois provinciales ou de la Loi sur le divorce, au Manitoba ou ailleurs, sont exécutées d'office, par Ministère du Procureur général, au nom du bénéficiaire, et le ministère fournit à ce dernier des services gratuits d'aide juridique. Nous croyons être la seule province à offrir un service aussi complet.

La Commission de réforme du droit, dans son étude intitulée "Droit de la famille: l'exécution des ordonnances de soutien", publiée en 1976, avait reconnu l'existence de difficultés au niveau de l'inexécution:

(TRADUCTION)

"Le problème qui est, de loin, le plus grave à propos des ordonnances de soutien tient au pourcentage important de cas où les pensions sont en souffrance. Comme il a été dit dans "Le Tribunal de la famille":

"Nous savons fort bien que nombre d'ordonnances judiciaires en droit de la famille, et surtout en ce qui concerne la pension alimentaire, ne sont pas

respectées. On estime que le taux de défaut total ou partiel de paiement en vertu des ordonnances de soutien correspond à 75% environ de toutes les ordonnances".

L'exécution est rendue encore plus difficile par les frais et les retards dus à l'enregistrement et à l'exécution des ordonnances par l'intermédiaire d'un organisme judiciaire différent, chaque fois que l'une ou l'autre des parties à l'ordonnance change de province.

Les différentes provinces attachent aussi des priorités différentes à l'exécution réciproque des ordonnances de pension alimentaire, ce qui donne lieu à d'autres incohérences. Par conséquent, le Manitoba estime qu'il conviendrait d'avoir un système fédéral d'exécution, pour surmonter ces difficultés et incohérences.

L'historique de l'exécution réciproque des ordonnances de garde est encore plus houleux. Bien que toutes les provinces, sauf le Québec et l'Ontario, aient adopté des lois uniformes pour l'exécution des ordonnances extraprovinciales de garde, ces lois sont rarement appliquées. Ce n'est qu'au Manitoba que le ministère du Procureur général offre les services d'un avocat pour l'administration et l'exécution de ces mesures législatives et, en dépit des demandes qu'il a formulées, les autres gouvernements ont refusé de prendre une part active en matière d'enlèvement civil d'enfants. Cette hésitation et ce manque de coopération de la part des autres provinces dans un domaine aussi délicat que l'enlèvement d'enfants a vidé de son sens, dans la pratique, toute la législation uniforme sur la question.

Comme il a été démontré plus haut, dans le domaine de l'exécution, le concept de législation "uniforme" que chaque province, individuellement, doit adopter, comporte plusieurs limites graves: les provinces n'ont pas toutes adopté ces lois et, même si elles l'ont fait, de graves incohérences ont surgi dans leur application. C'est pour cette raison que le Manitoba souhaite l'expansion de la compétence fédérale, au-delà du domaine du divorce, pour englober l'exécution uniforme et ordonnée des ordonnances de pension alimentaire et de garde dans tout le pays.

L'exécution comporte aussi un autre problème évident, à savoir le manque d'information et de ressources offertes aux provinces pour aider à rechercher les conjoints en défaut et les enfants enlevés. Pour l'instant, la plupart des efforts visant à localiser ces personnes sont fragmentés et peu coordonnés, à travers le Canada. Par conséquent, l'entreprise est souvent vouée à l'échec.

Pour remédier à ces problèmes, le Manitoba propose une loi fédérale permettant au gouvernement fédéral d'établir un système central d'enregistrement et d'exécution de toutes les ordonnances émises en vertu des lois fédérales ou provinciales. Les provinces seraient chargées de la mise en application des lois.

Par exemple, le gouvernement fédéral pourrait établir un registre central, avec un réseau de registres subsidiaires dans chaque province. Une fois l'ordonnance rendue et enregistrée dans un registre subsidiaire, elle serait enregistrée d'office dans le fichier central et serait immédiatement applicable dans tout le Canada, sans qu'il soit nécessaire de faire un autre enregistrement. A l'heure actuelle, il existe un registre central des ordonnances de divorce. Le Manitoba propose d'étendre ce concept afin d'y inclure toutes les ordonnances de garde et de pension alimentaire et, qui plus est, de fournir un système centralisé en vue du contrôle et de l'exécution de ces ordonnances. Le système envisagé permettrait d'atteindre une uniformité des normes, de la procédure et des recours applicables à travers le pays.

Le registre centralisé renfermerait aussi une banque fédérale-provinciale de données pour faciliter la recherche rapide et efficace des conjoints en défaut et des enfants enlevés.

La coalition sur le droit de la famille du Manitoba a déclaré, dans un mémoire au Comité d'étude constitutionnelle à Ottawa, le 1er février 1980:

"La coalition estime qu'il est encore plus important de considérer l'effet du transfert proposé de compétence (en matière de divorce) sur l'exécution des ordonnances de garde et de pension alimentaire. Dans ce domaine, nous considérons que les pouvoirs fédéraux devraient être accrus. Il est en effet trop courant et trop facile de quitter le ressort de la juridiction où une ordonnance a été prononcée. Certes, un recours existe, en principe, du fait d'accords de réciprocité entre les provinces, mais, dans le meilleur des cas, cette méthode est inefficace, lourde et très coûteuse. Dans de nombreuses provinces, le conjoint qui vient de l'extérieur doit retrouver le conjoint en défaut, ou celui qui a enlevé l'enfant, à ses propres frais, de même qu'il doit lui faire signifier les documents et engager un avocat dans cette autre province. Il est clair que cela n'est pas à la portée du citoyen moyen... Nous devons avoir des lois efficaces pour corriger cette situation et elles doivent être applicables dans tout le Canada... Il faut que le gouvernement fédéral prenne plus de responsabilités."

La Commission de réforme du droit du Canada a tenu, le 30 mai 1980, une réunion à Ottawa pour discuter de l'exécution interprovinciale des ordonnances de pension alimentaire. A cette rencontre assistaient les représentants provinciaux des sections du droit de la famille de l'Association du Barreau canadien. Ce groupe a fait la recommandation suivante:

"Quelle que soit la décision au sujet de la compétence législative en matière de mariage et de divorce, la constitution canadienne devrait contenir des dispositions générales permettant au Parlement fédéral de légiférer en vue de garantir l'exécution des ordonnances de pension alimentaire et de garde d'enfant partout au Canada."

Il est intéressant de remarquer que chaque sous-section provinciale du droit de la famille était représentée lors de la rencontre et que la recommandation fût unanime.

*** Cet exposé faisait partie de la prise de position exprimée par le gouvernement manitobain en matière de droit de la famille et de droit constitutionnel. Cette déclaration avait été faite à la rencontre des premiers ministres sur les questions constitutionnelles, en septembre 1980.

ANNEXE "B"

Règle de divorce
de la
Colombie-Britannique

Annexe "B"

Règle de la Colombie-Britannique sur le divorce

En Colombie-Britannique, une règle de divorce prévoit l'enregistrement d'ordonnances rendues à l'extérieur de la province. Le paragraphe 4 de la règle 36 se réfère à la loi provinciale sur l'exécution des ordonnances de soutien, de façon à ce que les ordonnances accessoires de soutien rendues à l'extérieur de la province puissent être exécutées par les cours provinciales. La règle 36 se lit ainsi:

- "(1) Where an order has been made by any other Court in Canada under section 10 or 11 of the Act the order may be registered pursuant to section 15 of the Act by filing an exemplification or certified copy of the order in the office of the Registrar of the Supreme Court of Victoria, whereupon it shall be entered as an order of the Court.
- (2) The exemplification or certified copy of the order shall be filed with the Registrar by delivering the same by hand or by forwarding the same by ordinary mail, accompanied by a written request that it be registered pursuant to the Act.
- (3) No fee is payable for registration of the order.
- (4) An order registered under this rule may be enforced by the Provincial Court (Family Division) of British Columbia as if it were a maintenance order within the meaning of Part IV of the Family Relations Act of the Province of British Columbia. (R.33.(4)am).
- (5) The Registrar, upon request in person or by letter, may send, without fee, a certified copy of an order made under section 10 or 11 of the Act, to the Registrar or a superior court in another province, to a public welfare organization in that province or to some other person in that province designated by the Attorney-General of that province."

ANNEXE "C"

RAPPORT DU SOUS-COMITÉ
FÉDÉRAL-PROVINCIAL
SUR LA SAISIE-ARRÊT
EN MATIÈRE DE PENSION ALIMENTAIRE

17 février 1983

RAPPORT DU SOUS-COMITÉ
FÉDÉRAL-PROVINCIAL
SUR LA SAISIE-ARRÊT
EN MATIÈRE DE PENSION ALIMENTAIRE,
REVISÉ EN DATE DU 17 FÉVRIER 1983

INTRODUCTION:

En février 1982, un sous-comité a été créé pour examiner les questions relatives aux recommandations qui portent sur l'utilisation de la saisie-arrêt continue en matière de pension alimentaire, et pour en faire rapport au comité. Le sous-comité était d'abord composé des représentants des provinces du Manitoba, de l'Alberta et du Nouveau-Brunswick. Par la suite, c'est-à-dire à l'automne 1982, le gouvernement fédéral a demandé de faire partie du sous-comité, ce qui lui a été accordé. C'est le représentant de la province de l'Alberta qui présidait le sous-comité. Tout au long du printemps et de l'été 1982, le sous-comité entreprenait son travail de compilation, en résumant les divers textes de loi sur la saisie-arrêt applicables aux ordonnances de pension alimentaire, dans chacune des dix provinces du Canada. Les résultats des travaux du sous-comité sont repris, dans leurs grandes lignes, dans les résumés de la situation dans chaque province, qui suivent le présent rapport. Les membres du sous-comité ont échangé ces renseignements de base et se sont réunis lors de la réunion du comité, tenue à Québec en septembre 1982. Un rapport a été présenté oralement au comité, à la suite duquel il a été décidé de rédiger un rapport écrit à l'intention des sous-ministres responsables de la Justice. Le rapport écrit devait compléter la Partie III du rapport provisoire du comité, présenté antérieurement aux sous-ministres.

SAISIE-ARRÊT CONTINUE:

Le sous-comité a déterminé qu'il y a, dans chacune des provinces canadiennes, un minimum de textes de loi qui régissent la saisie-arrêt et permettent au prestataire d'une pension alimentaire de faire saisir le salaire de son débiteur alimentaire. Il existe deux principaux types de saisie-arrêt:

- (i) la saisie-arrêt ordinaire, qui exige une ordonnance pour chaque nouvelle dette, et
- (ii) la saisie-arrêt continue, qui vise les dettes actuelles, de même que les dettes à échoir.

Les conséquences de l'impossibilité de recourir à une saisie-arrêt continue, en matière d'exécution des ordonnances de pension alimentaire, ressortent clairement.

La nécessité de prévoir le moment opportun et de faire plusieurs demandes successives, dans le cas des traitements, consomme du temps, en plus d'être frustrante et d'occasionner beaucoup de frais. Le sous-comité est donc unanimement d'avis que la saisie-arrêt continue devrait être accessible à tous les prestataires de pension alimentaire.

DÉFINITION DES DETTES SAISISSABLES:

Le comité a déterminé que la majorité des provinces ont effectivement une certaine forme d'ordonnances de saisie-arrêt continue à l'encontre des traitements, en matière d'ordonnances de pension alimentaire. Cependant, seule une minorité de provinces possèdent une telle forme de saisie-arrêt en matière de prestations de pension et, en outre, seule une minorité de provinces possèdent un recours de saisie-arrêt continue applicable à tous les types de dettes et d'obligations. Le droit positif en matière de saisie-arrêt abonde de distinctions en ce qui concerne des dettes actuelles, les dettes futures et les dettes éventuelles.

Les membres du sous-comité sont d'avis qu'en matière d'exécution des pensions alimentaires, de telles distinctions devraient être abolies par un texte de loi; cette mesure profiterait aux familles à charge. Ils soutiennent en outre que la nature des dettes qui font l'objet d'un bref de saisie ou de saisie-arrêt a été trop souvent limitée. Les membres du sous-comité sont d'avis que la notion de dette ne devrait pas être définie ou interprétée de façon restrictive. En d'autres termes, tout montant que le tiers-saisi doit verser au débiteur devrait être saisissable. C'est donc dire que des dettes, comme les traitements, les obligations contractuelles, les prestations de pension, ainsi que les dettes et obligations de la Couronne, devraient être saisissables.

RECOMMANDATION No. 1:

Toutes les provinces, ainsi que le gouvernement fédéral, devraient adopter une certaine forme de saisie-arrêt continue pour faire exécuter les ordonnances de pension alimentaire. Cette saisie devrait s'appliquer au plus grand nombre possible de dettes et d'obligations financières payables par le tiers-saisi au débiteur.

RECOMMANDATION No. 2:

Selon les membres du sous-comité, d'ici à ce que la première recommandation soit appliquée, bon nombre de moyens peuvent être utilisés pour que l'on ait de plus en plus recours aux dispositions législatives en vigueur sur la

saisie-arrêt, quant à l'exécution réciproque des obligations alimentaires. Le sous-comité recommanderait que les documents habituels qui sont envoyés portent à l'attention de la juridiction de réciprocité le fait qu'une demande de saisie-arrêt est amorcée et qu'il serait souhaitable d'utiliser les procédures de saisie permises par la loi actuelle.

Suite aux échanges de vues des membres du comité, il a été convenu que le comité adopterait les recommandations 1 et 2.

PROCÉDURE A SUIVRE POUR OBTENIR UNE SAISIE:

Les membres du sous-comité n'ont pu s'entendre quant à la meilleure procédure à suivre pour amorcer le processus de saisie. Toutefois, ils conviennent tous qu'une fois la saisie-arrêt autorisée, la saisissabilité devrait s'étendre à toute forme d'obligation, afin de garantir le paiement de la pension alimentaire. Par contre, les membres du sous-comité n'ont pu s'entendre unanimement sur la façon d'amorcer le processus de saisie. Les membres du sous-comité ont posé quatre hypothèses, qui doivent être analysées selon que l'on considère la saisie-arrêt comme un acte judiciaire ou comme un acte administratif.

LES DIVERSES FAÇONS DE PROCÉDER:

No 1 - Aucune condition préalable d'arriérés - ordonnance judiciaire:

Dans au moins une juridiction, le juge peut ordonner la saisie-arrêt en rendant une ordonnance de soutien financier, même s'il n'y a pas encore d'arriérés. Certains membres du sous-comité estiment qu'il s'agit là d'un recours très catégorique, puisqu'on recourt à la contrainte avant même qu'il n'y ait un indice de mauvaise foi. Cependant, ce recours peut être utile dans les rares cas où l'attitude prise devant le tribunal fait nettement prévoir qu'il y aura défaut. Le sous-comité a laissé cette hypothèse à l'appréciation du comité.

Suite à des discussions approfondies et à un vote de la majorité des membres présents à une réunion du comité à Toronto les 13 et 14 janvier 1983, le comité a adopté la recommandation qui suit:

RECOMMANDATION No 3:

Qu'il n'y ait pas de condition préalable quant aux arriérés pour qu'une ordonnance judiciaire de saisie-arrêt puisse

être rendue; le comité recommande toutefois que, dans les cas où il y a des arriérés, toute saisie ou saisie-arrêt soit amorcée par un processus administratif.

No 2 - Condition préalable d'arriérés:

De façon générale, lorsque, pour une requête en exécution de pension alimentaire, on envisage une saisie, la majorité des juridictions qui ont fait l'objet d'une étude exigent qu'il y ait des arriérés avant que des procédures de saisie-arrêt ne soient amorcées, soit par voie judiciaire, soit par voie administrative, notamment par l'intermédiaire du greffier.

Les juridictions qui procèdent par voie judiciaire pour amorcer une saisie-arrêt semblent procéder de deux façons principales:

(1) ACTE JUDICIAIRE:

D'une part, on peut s'adresser au juge qui préside une audience de justification, sans avoir au préalable donné au débiteur un avis d'intention de pratiquer une saisie ou saisie-arrêt. D'autre part, lorsqu'il y a des arriérés, on peut s'adresser à un juge en faisant une demande ex parte. En général, les demandes ex parte doivent être justifiées par des motifs particuliers, comme l'urgence ou la dilapidation des biens; la Cour doit généralement être convaincue que le débiteur peut se soumettre immédiatement à l'ordonnance.

(2) ACTE ADMINISTRATIF:

Certaines juridictions permettent que la saisie-arrêt, dans les procédures en exécution d'obligations alimentaires, soit amorcée au moyen d'un acte non judiciaire, c'est-à-dire administratif. Dans ces cas, il y a actuellement, au Canada, deux principales façons de procéder. D'une part, dès que le débiteur est en défaut de faire un versement exigé par une ordonnance de soutien financier, le créancier peut déposer au greffe une requête en saisie-arrêt. D'autre part, les obligations alimentaires peuvent être exécutées automatiquement, par voie de saisie-arrêt, sur l'initiative du greffier, si le créancier a fait enregistrer son ordonnance dans un système d'exécution automatique; en pareil cas, dès qu'il y a défaut, le processus de saisie-arrêt est amorcé par voie administrative. En général, dans ces deux situations, il est nécessaire qu'il y ait défaut. L'occasion de contester en totalité ou en partie, est généralement fournie au tiers-saisi, de même qu'au débiteur.

Le sous-comité ne peut, à l'unanimité, recommander au comité l'une de ces façons de procéder. L'un des membres du sous-comité estime que la meilleure façon d'amorcer une saisie-arrêt, en matière d'exécution d'obligations alimentaires, est de procéder par voie judiciaire. Les autres membres sont d'avis qu'une décision administrative est suffisante, pourvu que le débiteur ait la possibilité de contester la décision administrative rendue par le greffier. La solution de ce débat philosophique influera sur la position des membres du sous-comité quant à l'aspect de l'insaisissabilité.

Suite à des discussions approfondies et au vote de la majorité, le comité recommande ce qui suit:

RECOMMANDATIONS No 4:

Lorsqu'il y a des arriérés, la tenue d'une audience judiciaire de justification ne devrait pas être exigée avant qu'une saisie ou une saisie-arrêt puisse être amorcée. Le comité recommande en outre que, lorsqu'il y a des arriérés, le processus soit amorcé automatiquement par un fonctionnaire administratif, sous réserve du droit du créancier d'exercer un recours judiciaire pour contester la décision du fonctionnaire ou pour demander un redressement.

INSAISSABILITÉ:

Même si les membres du sous-comité s'accordaient à dire que toute créance payable au débiteur devrait pouvoir servir à exécuter une ordonnance de soutien financier, ils divergeaient d'opinion quant à savoir si l'on ne devrait pas établir certaines exceptions à la saisie-arrêt.

TRAITEMENTS:

On connaît, dans la plupart des provinces, des cas particuliers d'insaisissabilité en matière de saisie-arrêt des traitements en vue de satisfaire à des obligations alimentaires. Certaines provinces ont déterminé des cas d'insaisissabilité tandis que d'autres ont fixé l'insaisissabilité en termes de pourcentage. Dans certaines provinces, l'insaisissabilité n'existe pas. L'un des membres du sous-comité estime qu'il n'est pas nécessaire de déterminer des cas d'insaisissabilité lorsqu'une ordonnance de saisie-arrêt ne peut être obtenue que par voie judiciaire, étant donné que le juge, en vertu de son pouvoir discrétionnaire, tient compte des besoins du débiteur et fixe le maximum de l'ordonnance de saisie-arrêt. Au moins un des membres du sous-comité, préconisant le processus

administratif, estime que les cas d'exceptions à la saisissabilité devraient être insérés dans les dispositions législatives sur la saisie-arrêt. Un autre des membres estime que l'insaisissabilité ne devrait être accordée qu'à la demande du débiteur. Le fait de définir l'insaisissabilité présente un certain problème; en effet, avec le temps, dépendamment de la forme utilisée, les règles ne tiennent plus compte de la situation financière du débiteur, ni de l'indice du coût de la vie.

En résumé, l'insaisissabilité des traitements se définit essentiellement de trois façons: par un montant fixe, par un pourcentage, ou par une exemption fixée selon un pouvoir discrétionnaire, que ce soit par une décision du juge rendue au cours de l'instance, ou à la suite d'une demande faite subséquemment par le débiteur. Une autre possibilité serait de déterminer l'insaisissabilité selon un pourcentage de base et d'accorder au débiteur ainsi qu'au créancier le droit d'y déroger en donnant avis.

Les membres du sous-comité ne peuvent s'entendre unanimement sur une recommandation en cette matière, surtout à cause des différences de points de vue quant à la façon d'amorcer le processus de saisie-arrêt. Cependant, il ressort clairement qu'il doit exister un moyen d'en appeler au pouvoir discrétionnaire d'une Cour, si l'on procède par voie administrative. En effet, le débiteur alimentaire devrait avoir l'occasion de contester l'ordonnance de saisie-arrêt ou de demander une augmentation de son exemption une fois qu'une ordonnance de saisie-arrêt a été rendue.

Après avoir discuté à fond de la question, le comité recommande ce qui suit, en matière d'obligations alimentaires:

RECOMMANDATION No 5:

Que l'on ne fixe pas les limites de l'insaisissabilité en matière de saisie-arrêt, sous réserve du droit du débiteur d'exercer un recours judiciaire pour demander un redressement.

SÉCURITÉ D'EMPLOI:

Les membres du sous-comité sont d'avis que toute procédure de saisie devrait être assortie d'une certaine forme de protection de l'employé, afin d'éviter qu'un débiteur subisse une mesure disciplinaire ou qu'il soit congédié à cause de la saisie-arrêt de son salaire. En général, une sanction de nature civile, exigeant un degré de preuve moins élevé, vaut mieux qu'une sanction pénale. Dans certaines

juridictions, le fardeau de la preuve a été renversé afin de contourner les difficultés de preuve qui accompagnent une sanction pénale. Cependant, la Charte des droits et libertés peut avoir une incidence en l'espèce, et il faut prendre soin d'en tenir compte.

RECOMMANDATION No 6:

Il devrait exister un recours judiciaire civil, afin de dédommager et de réintégrer l'employé qui a subi une mesure disciplinaire ou qui a été congédié à cause de la saisie-arrêt de son salaire.

ORDRE DE PRIORITÉ:

Le sous-comité recommande ce qui suit:

RECOMMANDATION No 7:

La priorité la plus élevée devrait être attribuée à une saisie-arrêt visant à l'exécution d'une ordonnance de pension alimentaire. Les retenues sur salaire devraient être interdites dans la mesure où elles nuisent à l'exécution d'une ordonnance de pension alimentaire.

Le comité a adopté ces sixième et septième recommandations.

Enfin, les membres du comité ont discuté du mécanisme qui permettrait d'appliquer ces recommandations à l'échelle du Canada.

Le comité recommande ce qui suit:

RECOMMANDATION NO 8:

Les principes que le sous-comité a retenu en matière de saisie-arrêt, devraient, lorsque les ministres les auront acceptés, être transmis à la Conférence sur l'uniformisation des lois, qui pourrait les insérer dans un projet d'uniformisation des lois.

PROVINCE: COLOMBIE-BRITANNIQUE

LOIS: Court Orders Enforcement Act
Small Claims Act

SECTION 1

A. DISPOSITIONS RELATIVES À L'EXÉCUTION DES ORDONNANCES DE
PENSION ALIMENTAIRE AU MOYEN DE LA SAISIE-ARRÊT

Oui, par requête:

- a) du demandeur;
- b) au nom d'un enfant;
- c) du procureur général au nom d'un parent ou d'un conjoint.

B. OBTENTION D'UN BREF DE SAISIE-ARRÊT

Ex Parte

C. SIGNIFICATION DU BREF DE SAISIE-ARRÊT

- 1. La saisie-arrêt est continue pour 3 mois, à moins que la cour n'en donne mainlevée.
- 2. L'emprisonnement n'a pas pour effet de libérer les arrérages (se reporter au texte).
- 3. Oblige tout employeur, dans les cas d'arrérages (une nouvelle signification est nécessaire, dans le cas d'un employeur subséquent).

D. PRÉFÉRENCE

Déductions faites conformément aux lois fédérales et provinciales sur l'impôt, par exemple, en vertu de la Loi sur l'impôt de la Colombie-Britannique (B.C. Income Tax Act)

E. DÉDUCTIONS PAR LE TIERS-SAISI

Concerne les dettes "dues et exigibles" ou à échoir dans les 7 jours suivant la déclaration du tiers-saisi.

F. RÉVISION OU ANNULATION DE L'ORDONNANCE DE PENSION ALIMENTAIRE

Aucune disposition particulière.

G. INSAISSABILITÉ

1. a) 50 pour cent du traitement si celui-ci est de moins de 600 \$ par mois et 33 1/3 pour cent du traitement si celui-ci est de plus de 600 \$ par mois;
b) exemption minimale de 100 \$ par mois;
c) Le débiteur peut demander de changer le montant de l'exemption.
2. Les payments reçus en application de la Criminal Injury Compensation Act sont exempts.

H. DIVERS

1. Débiteur peut, à la suite d'une ordonnance ex parte, demander à payer par versements, en donnant avis à l'autre partie.
 2. Saisie possible dans le cas des fonctionnaires.
 3. La saisie-exécution et d'autres procédures sont disponibles pour forcer l'exécution d'une ordonnance.
 4. Dans le cas de la saisie des dettes, il faut tenir un registre et ce dernier peut faire l'objet d'une inspection.
 5. Sanction pour avoir congédié un employé dont le salaire a été l'objet d'une saisie-arrêt: 500 \$ d'amende, 3 mois d'emprisonnement ou les deux.
- I. PROCÉDURE RELATIVE À UNE ORDONNANCE PROVISOIRE OU DÉFINITIVE CONFORMÉMENT À LA LOI SUR L'EXÉCUTION RÉCIPROQUE DES ORDONNANCES DE PENSION ALIMENTAIRE
- Aucune disposition particulière.

SECTION 2 SMALL CLAIMS ACT

- A. DISPOSITIONS RELATIVES À L'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE AU MOYEN DE LA SAISIE-ARRÊT
- Aucune disposition particulière.

B. OBTENTION D'UN BREF DE SAISIE ET DE SAISIE-ARRÊT

La cour ou le registraire peuvent délivrer le bref.

La Court Orders Enforcement Act s'applique.

C. SIGNIFICATION DU BREF DE SAISIE-ARRÊT

Aucune disposition particulière.

D. PRÉFÉRENCE

Aucune disposition particulière.

E. DÉDUCTIONS PAR LE TIERS-SAISI

Aucune disposition particulière.

D. PRÉFÉRENCE

Aucune disposition particulière.

E. DÉDUCTIONS PAR LE TIERS-SAISI

La réclamation ne peut dépasser 2 000 \$.

F. RÉVISION OU ANNULATION DE L'ORDONNANCE DE PENSION ALIMENTAIRE

La Cour peut, à sa discrétion, modifier ou casser une ordonnance de paiement.

G. INSAISSABILITÉ

Ni l'une ni l'autre partie n'ont à payer d'honoraires d'avocat.

H. DIVERS

Le créancier qui ne comparaît pas peut avoir à payer une compensation au débiteur ou au tiers-saisi:

a) Sanction - 20 jours - à moins que le tiers-saisi ne donne une justification;

b) Ex parte;

c) Pour suspension d'instance, avec caution.

I. PROCÉDURE RELATIVE À UNE ORDONNANCE PROVISOIRE OU DÉFINITIVE CONFORMÉMENT À LA RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

Aucune disposition particulière.

PROVINCE: ALBERTA

LOI: Domestic Relations Act

A. DISPOSITIONS RELATIVES À L'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE AU MOYEN DE LA SAISIE-ARRÊT.

Oui, art. 29(1)

1. a) L'ordonnance de saisie du salaire est tenante pour une période déterminée ou jusqu'à ce que d'autres paiements soient effectués.
- b) L'ordonnance de saisie peut servir de bref d'exécution relativement aux arrérages. Bref renouvelable.

2. Ordonnance de saisie des dettes (art. 31).

B. OBTENTION D'UN BREF DE SAISIE-ARRÊT

1. Sur requête ex parte appuyée d'une déclaration sous serment (Règles de pratique de la Cour du Banc de la reine de l'Alberta).

2.1 Le créancier doit donner les raisons pour lesquelles il est incapable de percevoir ses créances ou doit pouvoir expliquer les raisons d'un délai excessif;

2.2 Sur requête ex parte devant juge de la Cour provinciale;

2.3 Ne peut porter que sur les arrérages;

2.4 Conditions:

- a) défaut;
- b) débiteur doit habiter en Alberta;
- c) probabilité que la perception soit impossible sans ordonnance ou encore qu'il s'ensuivrait un délai excessif.

C. SIGNIFICATION DU BREF DE SAISIE-ARRÊT

1.1 La signification a pour effet d'obliger l'employeur.

1.2 La signification est réputée accomplie sur réception du bref ou 48 heures après la signification, selon ce qui arrive en premier.

- 1.3 La signification faite à un associé ou à un agent est valide.
- 2.1 Dettes, obligations et responsabilités du débiteur (sauf les traitements et le salaire) exigibles ou à échoir:
- 2.2 Porte sur les dettes exigibles ou à échoir et sur la somme nécessaire dans le cas d'une saisie "continue";
- 2.3 Les sommes sont réputées saisies et l'ordonnance est réputée avoir été signifiée sur réception de l'avis, ou 48 heures après la signification, selon ce qui arrive en premier;
- 2.4 Porte également sur les dettes de société en Alberta.

D. PRÉFÉRENCE

- 2.1 Le bref a préférence sur tout autre bref jusqu'à concurrence de la somme exigible pour les trois mois précédents, sauf pour les réclamations de traitements et salaires.
- 2.2 Les sommes versées au greffier conformément à une ordonnance sont insaisissables.

E. DÉDUCTIONS PAR LE TIERS-SAISI

1. Paie la plus petite de deux sommes: ou bien la somme due au débiteur alimentaire ou bien une somme dont le montant est établi par l'ordonnance et qui inclut les dépens.
2. Les traitements et salaires sont réputés échoir chaque jour.
3. Le débiteur qui forme une opposition peut s'adresser à la Cour du Banc de la reine au moyen d'un avis de requête; les sommes versées à la Cour du Banc de la reine sont transmises au greffier de la Cour provinciale, et ensuite payées au créancier qui a prouvé par requête ex parte ou autre avis qu'il avait droit à recevoir ces sommes.
4. Un juge de la Cour provinciale peut rendre une ordonnance de pension alimentaire comme condition à un ajournement.

F. RÉVISION OU ANNULATION DE L'ORDONNANCE DE PENSION ALIMENTAIRE

1. L'ordonnance révisée peut être déposée auprès du shérif.
2. Lors d'une nouvelle audience, un juge de la Cour provinciale peut confirmer ou modifier l'ordonnance ou accorder une mainlevée.

G. INSAISSABILITÉ

Les exemptions prévues par les règles de pratique de l'Alberta (article 483) ne s'appliquent pas aux ordonnances ou jugements en matière de pension alimentaire.

H. DIVERS

1. Il est interdit de congédier un employé à cause d'une saisie-arrêt. Sanction: jusqu'à 1 000 \$ d'amende.
2. L'ordonnance de pension alimentaire peut être déposée au bureau des titres de propriété (Land Titles Office) et grève ainsi les propriétés enregistrées au nom du débiteur. Ceci a l'effet d'une rente perpétuelle.
3. Il existe d'autres recours.
4. On peut également saisir le salaire des fonctionnaires provinciaux de l'Alberta.

I. PROCÉDURE RELATIVE À UNE ORDONNANCE PROVISOIRE OU DÉFINITIVE, CONFORMÉMENT À LA LOI SUR L'EXÉCUTION RÉCIPROQUE DES OBLIGATIONS ALIMENTAIRES

1. Ordonnance définitive:
 - copie certifiée reçue par le Procureur général;
 - transmise à la Cour de l'Alberta pour y être déposée;
 - avis donné au débiteur;
 - exécution conforme à la Domestic Relations Act.

- Si les arrérages font l'objet d'une déclaration sous serment, le débiteur est ensuite convoqué à une audience de justification.
- Le débiteur reçoit copie de la preuve et présente son témoignage.
- La cour peut, dans certaines circonstances, modifier l'ordonnance ou accorder une mainlevée.

2. Ordonnance provisoire:

- L'ordonnance est déposée auprès du greffier, qui convoque le débiteur.
- Le débiteur reçoit copie de la preuve fournie par le créancier.
- Le débiteur fait valoir ses raisons.
- Un délai peut être accordé au débiteur pour lui permettre de compléter sa preuve.
- L'ordonnance n'a pas d'effet ou de validité avant d'avoir fait l'objet d'une confirmation, conformément à la Reciprocal Enforcement of Maintenance Orders Act.

PROVINCE: SASKATCHEWAN

LOI: Attachment of Debts Act

A. DISPOSITIONS RELATIVES À L'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE AU MOYEN DE LA SAISIE-ARRÊT

Oui, elles portent sur:

1. Ordonnance ou jugement rendus par la Cour du Banc de la reine;
2. Ordonnance ou jugement rendus par un tribunal situé à l'extérieur de la province;
3. Ordonnance de pension alimentaire rendue aux termes de la Deserted Wives and Children's Maintenance Act;
4. Ordonnance de pension alimentaire enregistrée ou confirmée aux termes de la Reciprocal Enforcement of Maintenance Orders Act;
5. Ordonnance de filiation aux termes de la Children of Unmarried Parents Act

B. OBTENTION D'UN BREF DE SAISIE ET DE SAISIE-ARRÊT

1. Une ordonnance de pension alimentaire doit:
 - a) être déposée;
 - b) être enregistrée;
 - c) être rendue par la Cour du Banc de la reine, ou
 - d) avoir fait l'objet d'une confirmation lors d'une ordonnance de saisie-arrêt.
2. Le registraire délivre ensuite le bref.

C. SIGNIFICATION DU BREF DE SAISIE-ARRÊT

Traitements ou salaire dus ou à échoir. Ordonnance de saisie-arrêt "continue".

D. PRÉFÉRENCE

La saisie effectuée à la suite d'une ordonnance de pension alimentaire a préférence sur toute autre saisie, cession ou réclamation faite AVANT ou APRÈS l'ordonnance de pension alimentaire.

(On n'a pas clairement établi si l'impôt fédéral sur le revenu reçoit la préférence).

E. DÉDUCTIONS PAR LE TIERS-SAISI

1. Versements échus aux termes de l'ordonnance de pension alimentaire dans les 30 jours précédant la date de la signification et versements à échoir à partir de cette date.
2. Le déficit peut être comblé lors du versement suivant.

F. RÉVISION OU ANNULATION DE L'ORDONNANCE DE PENSION ALIMENTAIRE

Le créancier alimentaire doit en donner un avis écrit au tiers-saisi.

G. INSAISSABILITÉ

Aucune exception n'est prévue dans le cas de l'ordonnance de pension alimentaire.

H. DIVERS

La loi offre d'autres recours au créancier alimentaire.

I. PROCÉDURE RELATIVE À UNE ORDONNANCE PROVISOIRE OU DÉFINITIVE CONFORMÉMENT À LA RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

Aucune disposition particulière.

PROVINCE: MANITOBA

LOIS: Loi sur la saisie-arrêt (The Garnishment Act)

Loi sur la pension alimentaire (The Family Maintenance Act)

A. DISPOSITIONS RELATIVES À L'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE AU MOYEN DE LA SAISIE-ARRÊT

1. ORDONNANCE DE SAISIE-ARRÊT CONTINUE (art. 14 et 15 de la Loi sur la saisie-arrêt) visant l'exécution:

- a) des ordonnances (domestiques) de pension alimentaire;
- b) des ordonnances de pension alimentaire faisant l'objet d'un enregistrement ou d'une confirmation aux termes de la Loi sur l'exécution réciproque des obligations alimentaires.

2. ORDONNANCE UNIQUE DE SAISIE-ARRÊT PORTANT SUR UNE SOMME FORFAITAIRE (art. 5 de la Loi sur la saisie-arrêt) visant l'exécution:

- a) des ordonnances de pension alimentaire (domestiques);
- b) par interprétation judiciaire, s'applique aussi aux ordonnances de pension alimentaire faisant l'objet d'un enregistrement ou d'une confirmation aux termes de la Loi sur l'exécution réciproque des obligations alimentaires;
- c) contrats de séparation en bonne et due forme.

B. OBTENTION D'UN BREF DE SAISIE ET DE SAISIE-ARRÊT

- 1. Il doit y avoir des arrérages.
- 2. Lorsqu'une ordonnance de pension alimentaire est enregistrée à la Cour de la famille, elle est exécutée par elle. L'officier de la Cour assigné à cette fonction peut obtenir de la Cour une ordonnance de saisie-arrêt, sans avis préalable et sans la tenue d'une audience (art. 31.1(10) de la Loi sur les pensions alimentaires).

3. Le créancier alimentaire peut obtenir de la Cour une ordonnance de saisie-arrêt sans avis préalable et sans audience.
4. La saisie-arrêt s'applique aux fonctionnaires provinciaux.

C. OBLIGATION CRÉÉE PAR LA SIGNIFICATION D'UN BREF DE SAISIE OU D'UN BREF DE SAISIE-ARRÊT

ORDONNANCE DE SAISIE DES TRAITEMENTS:

1. S'applique de façon continue aux traitements et aux prestations de pension exigibles ou à échoir, après signification au tiers-saisi;
2. S'applique également aux arrérages pour une valeur d'un mois, au moment de la signification;
3. Est valide jusqu'à ce que l'ordonnance de saisie-arrêt soit remplacée, annulée ou retirée, jusqu'à ce que la dette soit complètement payée ou jusqu'à ce que le débiteur ne soit plus à l'emploi du tiers-saisi ou n'en reçoive plus de prestations de retraite.

ORDONNANCE DE SAISIE-ARRÊT:

1. S'applique aux dettes exigibles ou à échoir au moment de la signification au tiers-saisi;
2. S'applique aussi aux traitements dus et exigibles pour une période d'un mois suivant le lendemain de la signification;
3. Si la dette n'est pas entièrement payée, il faut obtenir une nouvelle ordonnance de saisie-arrêt pour une somme forfaitaire.
i.e. il s'agit d'une seule dette.

D. PRÉFÉRENCE

1. ORDONNANCE DE SAISIE-ARRÊT CONTINUE:

Préférence sur toute autre ordonnance de saisie-arrêt ou sur toute autre dette du débiteur envers le tiers-saisi (art. 14(5) de la Loi sur la saisie-arrêt).

2. Aucune saisie-arrêt ne s'applique aux déductions de traitements faites par un employeur aux termes des lois fédérales ou provinciales.

E. DÉDUCTIONS PAR LE TIERS-SAISI

ORDONNANCES DE SAISIE-ARRÊT CONTINUE:

- le tiers-saisi peut déduire 1,00 \$ par paiement effectué aux termes de l'ordonnance de saisie-arrêt (art. 14(4) de la Loi sur la saisie-arrêt).

F. RÉVISION OU ANNULATION DE L'ORDONNANCE DE PENSION ALIMENTAIRE

ORDONNANCE DE SAISIE-ARRÊT CONTINUE:

- si l'ordonnance de pension alimentaire fait l'objet d'une modification, il faut une nouvelle ordonnance de saisie-arrêt, qu'il faut aussi signifier à nouveau (art. 14(3) de la Loi sur la saisie-arrêt)

G. INSAISSABILITÉ

1. Relatives aux traitements:

- 250.00 \$ par mois ou en proportion pour une partie d'un mois (art. 8 de la Loi sur la saisie-arrêt).

2. Les exemptions normalement possibles aux termes de la Loi sur les exécutions (Executions Act) et de la Loi sur les jugements (Judgments Act), ne s'appliquent pas (art. 29 de la Loi sur les pensions alimentaires).

H. RECOURS DU DÉBITEUR

1. Demande peut être faite au greffier de la Cour dans le but d'accroître le montant des exemptions relatives aux traitements:

- appel possible au juge;
- l'augmentation des exemptions ne peut aller que jusqu'à 90 pour cent des traitements.

2. Requête présentée au juge pour obtenir une mainlevée, etc, de l'ordonnance de saisie-arrêt.

3. Ordonnance de saisie-arrêt d'une somme forfaitaire:

- faire une demande au greffier pour obtenir mainlevée à certaines conditions;
- appel possible au juge.

I. DIVERS

1. Lorsque l'exécution d'une ordonnance de pension alimentaire est faite par la Cour de la famille, les sommes saisies sont déposées à la Cour.
2. On peut utiliser de façon simultanée une ordonnance de saisie-arrêt continue et une ordonnance de saisie-arrêt pour une somme forfaitaire, la première s'appliquant aux paiements exigibles aux termes de l'ordonnance de pension alimentaire ainsi qu'aux arrérages.
3. On ne peut congédier un employé pour le motif de la saisie-arrêt de son salaire. La Loi sur les normes d'emploi (Employment Standards Act) l'interdit.

PROVINCE: ONTARIO

LOIS: LOI PORTANT RÉFORME DU DROIT DE LA FAMILLE (LRDF)

Unified Family Court Rules
Supreme Court Rules
Provincial Court Rules
Small Claims Court Act
Pension Benefits Act
Wages Act

A. DISPOSITONS RELATIVES À L'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE AU MOYEN DE LA SAISIE-ARRÊT

1. Saisie du salaire (art. 30 de la LRDF):
 - a) pour l'exécution des ordonnances (domestiques) de pension alimentaire;
 - b) pour l'exécution des ordonnances de pension alimentaire enregistrées ou déposées conformément à la Reciprocal Enforcement of Maintenance Orders Act.
2. Saisie-arrêt pour l'exécution de a) et b) ci-dessus.
3. Les fonctionnaires provinciaux ne sont pas exceptés.

B. OBTENTION D'UN BREF DE SAISIE ET DE SAISIE-ARRÊT

1. Saisie du salaire:

Si le débiteur fait défaut de comparaître, le juge peut rendre une ordonnance de saisie du salaire après avoir donné avis au débiteur (LRDF).
2. Saisie-arrêt
 - a) Cour provinciale (division de la famille):
 - déposition d'une requête;
 - le greffier délivre un avis de saisie-arrêt;
 - en cas de défaut de paiement de la part du débiteur et en l'absence d'opposition de sa part, la Cour rend une ordonnance (Unified Family Court Rules et Provincial Court Rules);

b) Cour suprême de l'Ontario

- La cour peut rendre une ordonnance sur requête ex parte.

C. OBLIGATION CRÉÉE PAR LA SIGNIFICATION D'UN BREF DE SAISIE OU D'UN BREF DE SAISIE-ARRÊT

ORDONNANCE DE SAISIE DU SALAIRE

1. La saisie est continue et porte sur les traitements dus au débiteur au moment de la signification de l'ordonnance et sur les traitements à échoir.

SAISIE-ARRÊT

1. Porte sur les dettes, traitements et prestations de pension dus ou à échoir au moment de la signification de l'ordonnance au tiers-saisi (Small Claims Act, art. 145).
2. Ne vise qu'une seule dette ou qu'un seul paiement.
3. Lorsque la dette n'est pas exigible au moment de la saisie-arrêt, la Cour suprême peut ordonner que la dette soit payée au moment où elle devient exigible.

D. PRÉFÉRENCE

1. Ordonnance de saisie du salaire:
 - reçoit préférence sur toute autre saisie ou saisie du salaire survenant avant ou après la signification de l'ordonnance. LRDF, art. 30(3).
2. - s'effectue sous réserve des droits d'autres personnes.

E. DÉDUCTIONS PAR LE TIERS-SAISI

1. Ordonnance de saisie-arrêt rendue par la Cour suprême de l'Ontario:
 - Le tiers-saisi peut déduire 3.00 \$ pour ses frais de dépôt à la cour.

F. RÉVISION OU ANNULATION DE L'ORDONNANCE DE PENSION ALIMENTAIRE

1. Ordonnance de saisie du salaire:

- la Cour peut, sur requête en révision de l'ordonnance de pension alimentaire, accorder une mainlevée, une modification ou une suspension de l'ordonnance de saisie du salaire.

G. INSAISISSABILITÉ

1. Ordonnance de saisie du salaire:

- l'article 7 de la Loi sur les salaires, qui prévoit l'insaisissabilité des traitements jusqu'à concurrence de 70 pour cent, ne s'applique pas.

H. RECOURS DU DÉBITEUR

Saisie-arrêt:

1. Le débiteur peut former opposition à la saisie-arrêt et déposer sa contestation au greffe:
 - La cour rend jugement lors d'une audience sommaire.
2. Le débiteur peut, sur requête, demander la mainlevée de l'ordonnance de saisie-arrêt qui peut être accordée par la Cour (Wages Act, art. 8).

I. DIVERS

1. Si le système d'exécution automatique des ordonnances est utilisé, les paiements doivent être déposés à la Cour provinciale (division de la famille).
2. La Employment Standards Act interdit le congédiement d'un employé pour le motif que son salaire a fait l'objet d'une saisie ou d'une saisie-arrêt.

PROVINCE: QUÉBEC

LOIS: Code de procédure civile, articles 625 À 659.10

A. DISPOSITIONS RELATIVES À L'EXÉCUTION DES ORDONNANCES DE PENSION ALIMENTAIRE AU MOYEN DE LA SAISIE-ARRÊT

Saisie-arrêt continue en matière de traitements
(article 641.1):

- Pour l'exécution:

- a) d'une ordonnance (domestique) accordant une pension alimentaire;
- b) d'une ordonnance étrangère ayant force exécutoire par dépôt ou enregistrement ou conformément à la Loi sur l'exécution réciproque des obligations alimentaires.

Saisie-arrêt unique pour l'exécution de ce qui précède.

B. OBTENTION D'UN BREF DE SAISIE ET D'UN BREF DE SAISIE-ARRÊT

1. Bref de saisie-arrêt délivré par la Cour.
2. Quand les traitements font l'objet d'une saisie-arrêt, le tiers-saisi doit faire une déclaration et déposer chaque mois la partie saisissable de ce qu'il doit au débiteur saisi, jusqu'à ce que la dette soit payée.
3. S'il ne s'agit pas d'une saisie-arrêt de salaire, le tiers-saisi fait une déclaration en cour et le débiteur est tenu de comparaître pour faire valoir les motifs pour lesquels la saisie-arrêt ne serait pas valable. Le protonotaire peut ordonner au tiers-saisi de payer. (Art. 625 et 637).
4. Le percepteur des pensions alimentaires peut agir en qualité de saisissant pour le créancier du jugement. (Art. 659.3).

C. OBLIGATION CRÉÉE PAR LA SIGNIFICATION D'UN BREF DE SAISIE OU D'UN BREF DE SAISIE-ARRÊT

ORDONNANCE DE SAISIE DES TRAITEMENTS:

1. La saisie vaut tant pour le paiement des versements à échoir que des arrérages, selon les termes du jugement qui accorde la pension alimentaire (Art. 641.1);

2. La saisie demeure tenante jusqu'à mainlevée donnée par le protonotaire; mainlevée ne peut être donnée qu'un an après que les arrérages ont été acquittés (Art. 641.1);
3. La remise au créancier alimentaire doit être faite au moins une fois par mois (art. 647).

SAISIE-ARRÊT:

1. La saisie-arrêt s'applique aux dettes et aux prestations de retraite jusqu'à concurrence de 50 pour cent de la créance au moment de la signification du bref;
2. Le protonotaire peut déclarer la saisie-arrêt continue jusqu'à une échéance déterminée (art. 639);
3. Si la dette demeure impayée, il faut une nouvelle saisie-arrêt.

D. PRÉFÉRENCE

1. Saisie-arrêt continue relative aux traitements:
 - lorsqu'il y a d'autres créanciers, les créanciers alimentaires reçoivent la moitié des sommes déposées mensuellement (jusqu'à concurrence des montants dus) (art. 647).
2. Saisie-arrêt:
 - la préférence dépend de la date de la signification du bref.

E. DÉDUCTIONS PAR LE TIERS-SAISI

1. Saisie-arrêt en une fois:
 - le tiers-saisi a droit à une indemnité de témoin pour sa déclaration à la Cour.

F. RÉVISION OU ANNULATION DE L'ORDONNANCE DE PENSION ALIMENTAIRE

1. Saisie-arrêt continue relative aux traitements:
 - en cas de révision de l'ordonnance de pension alimentaire, le montant à saisir est modifié lorsque l'ordonnance révisée est signifiée au protonotaire.

G. INSAISSABILITÉ

Les revenus rendus insaisissables par le jeu de l'article 553 C.P.C. le sont également, mais seulement pour 50%, dans le cas du paiement d'une pension alimentaire (art. 553, dernier paragraphe).

H. RECOURS DU DÉBITEUR

1. Saisie-arrêt des traitements - continue ou en une seule fois:

- 1) Le débiteur peut former opposition à la saisie-arrêt dans les cinq jours de la signification de la copie de la première déclaration du tiers-saisi (art. 641.3);
- 2) Le débiteur peut demander au protonotaire de suspendre l'exécution de la saisie lorsqu'il n'y a pas d'arrérages, qu'il n'y a pas d'autre réclamation au débiteur et que celui-ci paie directement à la Cour les versements de la pension alimentaire, aux termes de l'ordonnance (art. 659.5);
- 3) Lorsque le débiteur dépose, volontairement et régulièrement, auprès du protonotaire une portion raisonnable de sa rémunération, dans les cinq jours après qu'elle lui a été versée.

I. DIVERS

1. Un créancier peut demander une évaluation par le juge si la rémunération payée au débiteur par le tiers-saisi est manifestement inférieure à la valeur des services rendus (art. 649).
2. Si les traitements ne peuvent être saisis, la Cour peut, sur requête du créancier, ordonner au débiteur de comparaître en personne et lui enjoindre de déposer régulièrement au greffe la portion saisissable de sa rémunération (art. 651).
3. Il est interdit de congédier un employé pour le seul motif de la saisie-arrêt. En cas de congédiement, il y a présomption que l'employé a été congédié à cause de cette saisie-arrêt et il incombe à l'employeur de prouver qu'il en est autrement (art. 650).

PROVINCE: NOUVEAU-BRUNSWICK

A. LOI PROVINCIALE

La Loi sur les relations familiales et sur les services destinés à l'enfant et à la famille (The Child and Family Services and Family Relations Act), S.N.-B., 1981, chap. 2.1

En matière de saisie-arrêt, les dispositions de cette loi n'autorisaient l'émission d'une ordonnance de paiement qu'après une audience de justification. Elles ont été modifiées en juin 1982, de façon à permettre une ordonnance de paiement sans avis préalable et sans audience, sous réserve du droit du débiteur de fournir une justification suffisante visant à faire annuler ou modifier l'ordonnance (art. 123(5) et 125(5)).

La loi modifiée permet aussi au juge de rendre une ordonnance de paiement en même temps qu'il rend une ordonnance de soutien financier. Il peut également rendre une ordonnance de paiement lorsque le débiteur a été cité à comparaître à une audience de justification.

Le juge peut assigner à un greffier, à un maître des rôles (master) ou à un autre officier de justice l'étude des requêtes par défaut et peut leur demander de statuer sur celles-ci. L'ordonnance du greffier sera alors réputée être l'ordonnance de la Cour, sauf si le greffier est d'avis que le débiteur doit être emprisonné, auquel cas le juge devra être saisi de l'affaire (art. 123(6)).

La loi contient d'autres dispositions se rapportant aux préférences relatives à toute autre cession de traitements, ordonnance de saisie, etc. Les sanctions imposées aux employeurs qui refusent de se soumettre à la saisie, la discrimination à l'égard des employés, la réintégration, etc., font aussi l'objet de dispositions de la loi.

En résumé, au Nouveau-Brunswick, une ordonnance de paiement peut être rendue:

1. par le juge, au moment où il rend une ordonnance de soutien financier;
2. par le juge, lors d'une audience de justification, sans avis préalable;

3. par le juge, sans audience de justification et sans avis préalable;
4. par le greffier, sans audience de justification et sans avis préalable.

Sont saisissables non seulement les traitements mais toute dette actuelle ou à échoir. Ainsi, une ordonnance de paiement peut être adressée à quiconque doit de l'argent au débiteur alimentaire.

B. RÈGLES DE PRATIQUE

La règle 72, conformément à l'article 19 de la Loi sur le divorce, stipule que la Cour peut rendre une ordonnance de paiement:

1. lorsqu'elle rend une ordonnance en première instance, enjoignant d'effectuer le paiement de sommes échelonnées en application de l'article 10 ou 11 de la Loi sur le divorce;
2. après avis de requête, dans les cas de défaut ou s'il y a une audience de justification;
3. sur requête de saisie ou de saisie et vente;
4. sur requête, dans les cas d'outrage au tribunal.

Il serait désirable que cette règle soit modifiée de façon à ce que l'exécution d'une ordonnance rendue en application de cette règle se fasse de la même façon que le prévoit la loi provinciale.

Au Nouveau-Brunswick, les ordonnances de pension alimentaire rendues conformément à la Loi sur le divorce (Canada) et à la loi provinciale sont mises à exécution par la Cour du Banc de la reine, division de la famille (Cour unifiée de la famille).

PROVINCE: NOUVELLE-ECOSSE

A. LOI PROVINCIALE

Family Maintenance Act S.N.S. 1980, chap.6.

Cette loi prévoit, à l'article 39, que lors d'une audience de justification, le juge peut rendre une ordonnance de saisie suivant la procédure et la forme prévues par les règles de pratique de la Cour suprême de la Nouvelle-Écosse.

Au paragraphe 2 de cet article, on stipule que lorsque l'ordonnance de saisie prévoit la saisie-arrêt des traitements, le juge peut fixer le montant maximum qui sera saisi périodiquement et ce montant devra paraître dans l'ordonnance.

B. RÈGLES DE PRATIQUE

La règle 53 traite, de façon générale, des ordonnances de saisie-arrêt. Le paragraphe 53.05 de cette règle traite de la saisie-arrêt des traitements par ordonnance d'exécution adressée au shérif. Cette ordonnance fixe le montant maximum de la saisie-arrêt à 15 pour cent des traitements bruts d'un employé; si les traitements nets après déductions atteignent 250 \$ par semaine, seule la différence entre le traitement après déductions de 15 pour cent et la somme de 250 \$ sera remise au shérif.

Cette règle prévoit aussi des sanctions pour outrage au tribunal dans les cas de discrimination pratiquée par un employeur à l'égard d'un employé, suite à une saisie-arrêt des traitements de ce dernier.

PROVINCE: ILE-DU-PRINCE-EDOUARD

A. LOI PROVINCIALE

Family Law Reform Act S.P.E.I. 1978, chap. 6

Les articles 28 et 29 traitent de l'exécution des ordonnances de soutien financier. Au moment d'une audience de justification, la Cour peut rendre, conformément à l'article 30, une ordonnance de saisie par laquelle elle ordonne à l'employeur de déduire des traitements de l'employé les créances actuelles ou éventuelles, sans dépasser toutefois le maximum permmissible selon l'article 17 de la Garnishee Act.

La loi contient aussi des dispositions relatives aux préférences et aux révisions des ordonnances de saisie.

La Garnishee Act prévoit à l'article 17 une exemption applicable aux traitements dus au débiteur saisi, ou à recevoir par lui, comme rémunération de son travail; les montants et les motifs sont prévus par les règlements. Il revient au protonotaire ou au greffier de calculer l'exemption à partir de chaque objet répondant à une nécessité de base (item of basic need), tel que prévu par les règlements, et de façon telle qu'en aucun cas le débiteur saisi ne se retrouve avec un revenu moindre que celui qu'il recevrait de la sécurité sociale.

B. RÈGLES DE PRATIQUE

En application de la Loi sur le divorce, la règle 57 ne contient aucune disposition relativement à la saisie-arrêt des traitements. C'est le même cas pour les règles générales de pratique.

PROVINCE: TERRE-NEUVE

A. LOI PROVINCIALE

Maintenance Act, R.S.N. 1970, chap. 223:

Cette loi ne contient pas de dispositions précises sur la saisie-arrêt. Cependant, l'article 13(2)(d) confère au tribunal le droit d'imposer des conditions à la personne en défaut, selon qu'il le juge à propos dans les circonstances.

Attachment of Wages Act, R.S.N. 1970, chap. 16:

Cette loi contient des dispositions et exemptions très spécifiques relatives à la saisie des traitements ou des salaires.

A l'article 7, la loi stipule: "(traduction) la présente loi ne s'applique pas à la saisie ou à l'exécution résultant d'un jugement ou d'une ordonnance (de pension alimentaire)". On peut présumer par là qu'il est possible de recourir à la saisie pour l'exécution des obligations alimentaires mais que les exemptions prévues par la loi dans le cas des saisies ne s'appliquent pas lorsqu'il s'agit d'une obligation alimentaire.

B. RÈGLES DE PRATIQUE

Dans les règles de pratique, il n'existe aucune règle précise relative à la saisie-arrêt comme moyen d'assurer l'exécution d'une obligation de pension alimentaire.

ANNEXE "D"

Statistiques sur les
ordonnances de garde et de pension alimentaire

Section de la recherche et de la statistique
Ministère de la Justice

avril 1983

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Introduction

Le représentant fédéral au sous-comité de l'information du Comité fédéral-provincial sur l'exécution des ordonnances de garde et de pension alimentaire a convenu de faire rapport des ordonnances de garde et de pension alimentaire. Gina Alderson a interrogé des représentants de chaque province afin d'établir quelles statistiques sont disponibles et l'on trouvera ci-dessous les statistiques recueillies par chaque province, avec une brève explication de ce que ces chiffres signifient. Après la présentation des données actuelles sur le défaut de paiement dans le cas des ordonnances de pension alimentaire et sur les violations dans le cas des ordonnances de garde, on traite des questions auxquelles il faudrait répondre pour trouver des mesures qui pourraient améliorer l'exécution et des données qu'il faudrait recueillir pour répondre à ces questions.

Méthodologie

On a réalisé des entrevues avec environ trois représentants de toutes les provinces à l'exception de l'Alberta. Les premiers contacts étaient les représentants provinciaux au Comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant. On leur a demandé des renseignements ainsi que les noms d'autres contacts provinciaux qui pourraient fournir d'autres renseignements. On a ensuite procédé à des entrevues avec chaque personne chargée de recueillir les statistiques disponibles. D'ordinaire, après un premier contact où l'on expliquait les besoins en matière de données, on demandait de faire parvenir des rapports ou des listages d'ordinateurs présentant les données, les catégories de données recueillies et tout commentaire ou renseignement pertinent permettant de replacer les statistiques dans leur contexte. Toutes les personnes interrogées représentaient soit le gouvernement fédéral soit les gouvernements provinciaux, puisqu'en général le secteur privé ne s'occupe pas de la cueillette des statistiques.

L'un des principaux problèmes à l'égard des renseignements dont nous disposons présentement sur les ordonnances de garde et de pension alimentaire est que la plus grande partie de la documentation descriptive canadienne ne s'appuie pas sur des statistiques. Il existe de nombreuses publications qui décrivent et reprennent les mêmes problèmes, et les injustices qui en découlent, sans se fonder sur des données empiriques ni recommander de solutions précises.

Les statistiques disponibles

Les seules statistiques recueillies sur les ordonnances de garde et de pension alimentaire, ce qui comprend les ordonnances émises en vertu de la Loi sur le divorce et en vertu des lois provinciales, sont tenues par les gouvernements provinciaux. Les renseignements recueillis varient grandement d'une province à l'autre et aucune catégorie n'est uniforme dans tout le Canada. Le défaut de paiement des ordonnances de pension alimentaire n'est pas noté de façon uniforme. Dans certains cas dits "en défaut", le débiteur ne paie pas du tout, dans d'autres cas il saute un versement ici et là ou encore, il paie à l'échéance une somme inférieure à celle que stipule l'ordonnance. Le défaut de paiement est, dans une large mesure, une question de degré et, pour être valables, les statistiques doivent en tenir compte.

En outre, la cueillette des statistiques sur les ordonnances de garde et de pension alimentaire dans chaque province en est encore au stade de l'élaboration et l'on rencontre, par conséquent, toutes sortes de difficultés: absence totale de cueillette de données (Île-du-Prince-Édouard), cueillette limitée à quelques régions de la province (Terre-Neuve, Nouveau-Brunswick, Saskatchewan, Colombie-Britannique), cueillette uniforme à travers la province mais affectée par des problèmes internes (Manitoba). En l'absence de données susceptibles de comparaison, il est impossible d'établir les tendances régionales et nationales à l'égard de l'exécution des ordonnances de garde et de pension alimentaire.

Puisque les statistiques ne sont pas recueillies selon les mêmes dimensions et puisqu'il est impossible de comparer les chiffres eux-mêmes de façon valable, le chercheur a préparé un tableau des genres de renseignements disponibles, suivi d'une brève description des statistiques recueillies dans chaque province. Ce tableau a été constitué à partir des questions suivantes:

- 1) Est-ce que l'on tient des statistiques du nombre total d'ordonnances de pension alimentaire?
- 2) Est-ce que l'on tient des statistiques du nombre de défauts de paiement pour chaque ordonnance de pension alimentaire provenant de la province?
- 3) Est-ce que l'on tient des statistiques du nombre total de mesures d'exécution prises par un tribunal pour chaque ordonnances de pension alimentaire?

- 4) Lorsque des statistiques sont disponibles, tiennent-elles compte de la loi utilisée pour exécuter l'ordonnance?
- 5) Est-ce que l'on tient des statistiques de la valeur en dollars des pensions alimentaires perçues?
- 6) Existe-t-il des statistiques des ordonnances de garde?
- 7) Existe-t-il des statistiques de l'exécution des ordonnances étrangères (Exécution réciproque des obligations alimentaires)?
- 8) La cueillette des données est-elle uniforme dans toute la province?
- 9) Les statistiques disponibles peuvent-elles servir à établir des projections pour l'ensemble de la province?
- 10) Le système de cueillette des données est-il manuel, ou informatisé?
- 11) Prévoit-on modifier le système de cueillette des données dans un proche avenir?
- 12) Dans la province, l'exécution se fait-elle à l'initiative de l'État (est-ce l'État plutôt que le conjoint créancier qui entreprend les procédures d'exécution en cas de défaut de paiement?)?

Question	NPLD.	P.E.I.	N.S.	N.B.	QUE.	ONT.	MAN.	SASK.	ALTA.	B.C.
1	NO	****	YES	NO	NO	NO	NO	NO	note ¹	NO
2	YES		NO	YES	YES	YES	YES	NO		YES
3	NO		NO	YES	NO	YES	NO	NO		NO
4	NO		NO	YES	NO	NO	YES	YES		NO
5	YES		YES	NO	NO	NO*	YES	NO		NO
6	NO		NO	NO	NO	NO	NO	NO		NO
7	YES		NO	YES	YES	YES	YES	NO		NO
8	NO		YES	NO	YES	YES	YES	NO		NO
9	NO			NO				YES		NO
10	MANUAL		MANUAL	MANUAL	MANUAL	COMPUTERIZED	COMPUTERIZED	MANUAL		MANUAL
11	YES		POSSIBLY	YES	NO	NO	YES	YES**		YES
12	NO***	YES	YES	YES	NO	YES	YES	NO		YES

Note¹: No response.

* This information was kept up to and including 1979-80.

** There is currently a submission before the provincial Treasury Board, seeking approval for funds needed to implement automatic enforcement.

*** Ledger cards are monitored once a month, however in the case of defaults the creditor spouse has usually notified the court by this time.

**** Presently does not gather any statistics but because of size of province, this could easily be done given specific requests, and sufficient time.

STATISTIQUES PAR PROVINCE

Terre-Neuve

A Terre-Neuve, seul le Tribunal de la famille à juridiction intégrale de Saint-Jean recueille des statistiques. La juridiction de ce tribunal comprend environ le quart de la population, cependant les renseignements recueillis ne sont pas représentatifs de l'ensemble de la province.

Le Tribunal de la famille de Saint-Jean a un programme d'exécution à l'initiative de l'État. Les comptes ne sont cependant contrôlés qu'une seule fois par mois et les procédures d'exécution ne sont entreprises qu'à ce moment. Puisque les cas de défaut de paiement ne font pas l'objet d'une exécution immédiate de la part de l'État, il se peut que le conjoint créancier ait déjà entrepris des procédures. On estime que 80 pour cent des créanciers qui n'ont pas reçu les versements à temps ont ainsi pris eux-mêmes l'initiative.¹ Le tribunal n'a pas présentement le personnel nécessaire pour améliorer ce système.²

Un compte n'est ouvert que lorsque les versements en vertu d'une ordonnance de pension alimentaire sont payables au tribunal. Ceci n'est obligatoire que lorsque le conjoint créancier est un assisté social. Dans tous les autres cas, le versement au tribunal est volontaire et ce choix est d'ordinaire influencé par la recommandation de l'avocat du créancier. Le Tribunal de la famille à juridiction intégrale estimait en 1982 qu'entre 30 et 40 pour cent des versements de pension alimentaire étaient faits privément.³

Au 31 octobre 1982, sur les 587 comptes inscrits à Saint-Jean, 193 étaient en souffrance, 52 étaient temporairement suspendus et les 342 autres étaient des ordonnances provenant de l'extérieur de la province. Environ la moitié du total des comptes (297) impliquait des récipiendaires de l'assistance sociale. On projetait en 1982 que le Tribunal de la famille à juridiction intégrale percevrait au total \$700 000.

On ne tient pas de statistiques à l'égard des ordonnances de garde.

Île-du-Prince-Édouard.

La province prend l'initiative de l'exécution, mais aucune statistique n'est tenue ni sur les ordonnances de garde ni sur les ordonnances de pension alimentaire. Il est virtuellement impossible de recueillir des statistiques sur les ordonnances de garde en vertu du régime actuel.⁴ Étant

donné la taille de la province, il serait cependant facile de recueillir des statistiques sur les ordonnances de pension alimentaire.⁵

Nouvelle-Écosse

La Nouvelle-Écosse tient des dossiers uniformes, à l'échelle de la province, de toutes les ordonnances de garde et de pension alimentaire pour lesquelles les versements sont payables au tribunal, qu'il y ait ou non défaut de paiement, ainsi que de toutes les ententes privées prévoyant le versement de la pension alimentaire au tribunal. Ces ententes privées et ces ordonnances sont désignées ensemble sous le nom d'ordonnances actives. Malheureusement, puisque les statistiques recueillies portent à la fois sur le défaut de paiement des ordonnances de pension alimentaire et sur les violations des ordonnances de garde, on ne saurait distinguer les deux cas.

Au cours de l'exercice financier 1981-1982, il y avait 6 957 ordonnances actives. En plus, il y avait 576 ordonnances inactives et 1 862 autres ont été révoquées. Les ordonnances inactives comprennent les cas où il est impossible de retrouver le débiteur et les ordonnances placées en suspens par le tribunal pour un délai donné (par exemple pour cause de maladie ou de chômage ou encore pendant une tentative de réconciliation). Certains juges révoqueront l'ordonnance si le conjoint débiteur n'a pu être retrouvé depuis trois ans, alors que d'autres ne la révoqueront jamais.

Puisque les statistiques sur le nombre de procédures d'exécution entreprises au tribunal, dans le cas des défauts de paiement des ordonnances de pension alimentaire comme dans celui des violations des ordonnances de garde, ne comportent aucun renvoi aux ordonnances à jour, il est impossible d'établir la proportion du total des ordonnances de pension alimentaire pour lesquelles il y a défaut de paiement. Pour établir le nombre et l'importance des défauts de paiement et violations, il faudrait inscrire le nombre d'actions entreprises pour appliquer chaque ordonnance du tribunal. En 1981-1982, 5 604 ordonnances de garde et de pension alimentaire ont été exécutées par suite d'un recours au tribunal.

On tient un dossier de la valeur totale en dollars des pensions alimentaires dues et perçues chaque mois. Puisque les arrérages perçus sont inclus dans le total des sommes perçues, il n'est pas possible de dégager la valeur réelle des arrérages.

La collecte manuelle des données et le manque d'années-personnes pour recueillir des données limitent le genre et la somme des données qui peuvent être recueillies.

Nouveau-Brunswick

La cueillette des données dans la province du Nouveau-Brunswick est présentement en état de transition. On prévoit une cueillette uniforme des données pour 1983, alors que les méthodes utilisées par le Tribunal de la famille de Fredericton seront étendues à toute la province.

Les données recueillies à Fredericton constituent un exemple des catégories de renseignements qui seront recueillis, mais à l'heure actuelle ne représentent pas quantitativement les tendances provinciales. ⁶

Les 395 cas de pension alimentaire contrôlés au Tribunal de la famille de Fredericton en octobre 1982 ne représentaient que les ordonnances à l'égard desquelles les versements devraient être faits au tribunal. Ce total comprend 380 cas reportés du mois précédent plus quinze nouveaux cas, moins le nombre de cas auxquels on met fin. Les cas auxquels on met fin comprennent ceux qui sont transférés à l'extérieur de la province ainsi que ceux où le créancier ou le débiteur est décédé.

On tient également un dossier quodidien et mensuel du nombre total de procédures judiciaires entreprises pour exécuter les ordonnances de pension alimentaire.

A l'heure actuelle, il n'y a aucune cueillette régulière de renseignements sur les violations des ordonnances de garde. Le Tribunal de la famille à juridiction intégrale est en train de revoir ses formules et les nouvelles formules comporteront des questions sur la violation des ordonnances de garde.

Le Nouveau-Brunswick introduit présentement, à titre d'expérience, des procédures administratives visant à réduire le temps que le tribunal doit consacrer à l'exécution des ordonnances en défaut. Des amendements récents à la Loi sur les services à l'enfant et à la famille et sur les relations familiales donnent à l'administrateur du tribunal des pouvoirs quasi-judiciaires à l'égard des cas de défaut.

Québec

Les statistiques disponibles au Québec sont uniformes dans toute la province. Depuis le début du programme de perception au Québec, en janvier 1981, un nombre total de 8 089 ordonnances ont dû être perçues par l'État. Puisque l'État n'a pas l'initiative de l'exécution au Québec, c'est le créancier qui doit entreprendre les procédures à chaque fois que survient un défaut de paiement. Le conjoint créancier doit communiquer avec le percepteur pour faire démarrer les procédures d'exécution et l'ordonnance est alors inscrite, à des fins statistiques, comme un cas de défaut de paiement.

Ce chiffre de 8 089 cas de défaut de paiement représente le nombre total d'ordonnances qui sont soit présentement en défaut ou qui ont été présentées à l'État à un moment ou à un autre à des fins de perception.

Les cas sont ventilés en ordonnances locales (6,602), ordonnances provenant de l'étranger (1,487) et ordonnances locales envoyées à l'extérieur de la province pour exécution (1,510). On conserve également des renseignements sur le nombre d'injonctions, de saisies de salaire et d'enregistrements de privilège qui ont eu les résultats escomptés.

Le total des sommes perçues dans les cas de défaut de paiement ne vise que les versements faits au percepteur et non les versements faits privément. En 1981, le percepteur a recueilli au total \$794 818.

On ne recueille aucun renseignement sur les ordonnances de garde.

Ontario

L'Ontario recueille des statistiques sur le nombre de comptes courants à l'échelle de la province. Il y a un compte courant pour chaque ordonnance de pension alimentaire pour laquelle le conjoint créancier a signé une entente écrite permettant l'exécution automatique par la province, lorsqu'au moins un paiement par année a été reçu. Il faut signaler que, étant donné ces critères, le dossier des comptes courants ne reflète pas nécessairement tous les cas de défaut de paiement. Il y avait 44 180 comptes courants au cours de l'exercice financier 1981.

Il y a eu 11 432 ordonnances d'exécution, c'est-à-dire des ordonnances où des mesures judiciaires ont été entreprises. Ceci ne tient pas compte des débiteurs qui n'ont pas payé mais qui n'ont pas été assignés pour des raisons diverses

(par exemple, l'impossibilité de les trouver). Puisqu'il n'y a aucune façon d'établir le nombre d'ordonnances d'exécution émises pour un compte courant donné, il est impossible de calculer le nombre réel de défauts de paiement.

Comme dans toutes les provinces où l'exécution se fait sur l'initiative de l'État, il y a une période de "grâce" entre le défaut de paiement, la lettre d'avertissement et l'assignation au tribunal. Manifestement, ceux qui paient juste avant l'assignation sont techniquement en défaut de paiement; cependant, aucune province ne conserve de renseignements sur ce genre de cas.⁷

On note la somme totale des pensions alimentaires perçues (\$40 437 837), mais ces sommes peuvent comprendre des arrérages et il n'est donc pas possible d'établir le rapport entre ce chiffre et les ordonnances d'exécution (11 432), pour établir quelle proportion de la somme impliquée exige des mesures judiciaires, ni d'établir le rapport avec le nombre de comptes courants (44 180) afin de calculer la moyenne perçue pour chaque cas, qu'il y ait ou non défaut de paiement.

Manitoba

Le Manitoba recueille des données uniformes pour toute la province. Au 30 septembre 1982, 6 088 comptes étaient soumis au contrôle. Les comptes comprennent toutes les ordonnances faites en vertu du Family Maintenance Act, qui sont exécutées par un tribunal, et toutes les ordonnances faites en vertu de la Loi sur le divorce auxquelles s'appliquent les paragraphes 31.1 et 31.2 de la Family Maintenance Act. C'est le cas, à moins que le conjoint créancier, avec le consentement du conjoint débiteur, ne renonce à inscrire l'ordonnance de divorce au programme d'exécution automatique. Il n'y a donc aucune trace des ententes privées et des ordonnances de divorce qui ne contiennent pas expressément ce libellé.

Les comptes sont subdivisés en exécution réciproque des ordonnances de pension alimentaire d'outre-province (entrées), exécution réciproque outre-province des ordonnances de pension alimentaire (sorties), ordonnances locales et cas fermés. Les cas ne sont fermés que lorsque l'ordonnance est terminée, par exemple lors du décès de l'une des parties. Il y a ventilation de ces catégories pour déterminer le nombre d'ordonnances de pension alimentaire émises. Il n'y aucune statistique sur le nombre de défauts de paiement au sein du groupe contrôlé.

On note également les sommes dues et les arrérages reçus par le tribunal, perçus pour les clients de l'assistance sociale et perçus pour ceux qui reçoivent une assistance partielle. Les statistiques se sont avérées inexactes et un nouveau programme de cueillette sera mis en oeuvre en 1983. ⁸

Au Manitoba, le ministère des Services communautaires et des corrections conserve des renseignements détaillés sur la catégorie "sorties", c'est-à-dire sur l'exécution d'ordonnances du Manitoba dans une autre province. Au 8 novembre 1982, 40 pour cent des 1076 ordonnances "sorties" (376) étaient en défaut, la plupart des arrérages s'élevant à moins de \$2 000. Plus de 70 pour cent des débiteurs en défaut (376) avaient manqué un ou plusieurs versements, mais moins de 30 pour cent d'entre eux étaient gravement en défaut (pour un montant de plus de \$2 000). ⁹

Il n'y a aucune statistique sur les ordonnances de garde.

Saskatchewan

Aucune statistique n'est recueillie sur les ordonnances de pension alimentaire ou sur les ordonnances de garde en Saskatchewan, à l'exception de celles qui sont recueillies par le Tribunal de la famille à juridiction intégrale de Saskatoon.

Il y a eu environ 950 actions en exécution d'ordonnances de pension alimentaire à Saskatoon en 1981. Ce chiffre est une estimation, car les statistiques portent sur les actions entreprises par ordonnance, les ordonnances de pension alimentaire et de garde étant regroupées dans la même catégorie.

Si l'on extrapole à partir des chiffres de Saskatoon, environ 3 800 actions en exécution d'ordonnances de pension alimentaire ont été entreprises en Saskatchewan en 1981. ¹⁰

On tient des statistiques sur les actions entreprises par requête sous le régime de la Unified Family Court Act. Puisque l'exécution ne se fait pas sur initiative de l'État et puisque les ordonnances n'exigent pas en général que le paiement soit versé au tribunal, il n'existe aucune statistique sur les défauts de paiement.

On a récemment préparé une demande au Conseil du Trésor de la province, pour obtenir des fonds pour mettre sur pied un système d'exécution sur initiative de l'État. La présentation de cette demande ne se fera cependant que

lorsqu'on aura pu obtenir des données démontrant qu'un tel système d'exécution pourrait être rentable en ce qu'il permettrait de réduire la liste des bénéficiaires de prestations d'aide sociale.¹¹

Colombie-Britannique

Le cabinet provincial étudie présentement un plan à l'échelle de la province à l'égard des ordonnances de garde et de pension alimentaire. On ne dispose encore d'aucun renseignement sur les détails de ce système.¹²

Seul un projet-pilote impliquant l'exécution sur initiative de l'État recueille présentement des statistiques sur les ordonnances de pension alimentaire. Les données présentement recueillies représentent une petite portion de la Colombie-Britannique, soit l'île de Vancouver et environ les deux-tiers de la région intérieure. Ces renseignements ne peuvent être extrapolés pour en dégager des tendances provinciales, car ils ne comprennent pas Vancouver (le ministère des Ressources humaines de la Colombie-Britannique estime que 50 pour cent des familles monoparentales de la province se trouvent à Vancouver).¹³

Dans les deux régions en cause, il y avait 3 390 cas de défauts de paiement au mois d'octobre 1982. Ceci comprend toutes les ordonnances exécutées dans les tribunaux provinciaux, c'est-à-dire les ordonnances où le tribunal ordonne que le versement soit fait au tribunal, ainsi que les ententes volontaires et les ordonnances de divorce pour lesquelles les conjoints créanciers ont demandé l'exécution sur initiative de l'État.

Bien que l'on tienne compte du nombre de paiements reçus et de leur valeur en dollars, il n'est pas possible de calculer le nombre total des défauts de paiement, parce que ces dossiers incorporent les arrérages sous une forme non identifiable.

Comme on l'a déjà dit, dans tous les systèmes d'exécution sur initiative de l'État, les données ne tiennent pas compte des défauts techniques de paiement. Ainsi, on a réalisé à Victoria une étude de 100 échantillons de paiement, sur une période de six mois, et l'on a découvert qu'environ 10 pour cent des ordonnances étaient techniquement respectées.¹⁴

Genre de statistiques à recueillir

Les deux questions les plus importantes auxquelles il faut répondre afin d'améliorer l'exécution des ordonnances de pension alimentaire sont les suivantes: quels sont ceux qui

sont en défaut de paiement et quelle méthode d'exécution est la plus efficace. Pour répondre à ces questions, il faudrait obtenir les renseignements suivants:

- 1) Nombre total d'ordonnances de pension alimentaire émises et nombre total de défauts de paiement. Pour pouvoir comparer, entre les provinces, le nombre des ordonnances de pension alimentaire dont les paiements sont en défaut, il faut noter toutes les ordonnances émises et tous les défauts de paiement pour chaque ordonnance. Pour établir le nombre de défauts de paiement pour chaque ordonnance, il faut prendre note de chaque défaut de paiement à l'égard de la première ordonnance de pension alimentaire, avec renvoi à tous les défauts futurs de paiement à l'égard de cette ordonnance. Pour obtenir des résultats uniformes et clairs, il faudrait établir des critères définissant ce qui constitue un défaut de paiement, tant en termes du délai de paiement que de la valeur des arrérages.
- 2) Profil des débiteurs en défaut. Manifestement, de nombreux facteurs influencent le défaut de paiement, notamment ceux qui découlent des attitudes personnelles et ceux qui découlent de la nature contradictoire des procédures judiciaires relatives aux questions de divorce et de droit de la famille.¹⁵ Il est impossible de distinguer nettement les deux cas, mais les études publiées sur le défaut de paiement signalent deux grands facteurs: en premier lieu, la façon dont le débiteur perçoit son obligation de payer et en second lieu, la façon dont il perçoit sa capacité de payer.
 - a) Perception de l'obligation de payer

Bien que très peu de recherches aient été effectuées pour tenter de mesurer directement ce facteur¹⁶, on perçoit, dans de nombreuses études, que beaucoup d'hommes qui se disent incapables de faire les versements, pourraient, à tout le moins, faire des versements partiels, s'ils considéraient cela comme prioritaire. Idéalement, on voudrait avoir des renseignements sur ces attitudes. Cependant, cela implique un niveau de collecte de données qui n'est pas réalisable de façon permanente.

Une façon indirecte qui permettrait une certaine étude de ce facteur serait de recueillir des statistiques sur le taux de défauts de paiement selon chaque genre de procédure judiciaire, par exemple, le taux de défauts de paiement découlant des procédures judiciaires qui ont recours aux services de médiation et de

conciliation. On pourrait ainsi se faire une idée quant à savoir si une procédure donnée affecte le nombre de défauts de paiement. Même si ceci n'impliquerait pas nécessairement un changement d'attitude, cela impliquerait que le taux de paiement varie d'après des facteurs autres que la capacité de payer, et cela pourrait démontrer comment chaque méthode affecte la façon dont on perçoit son obligation de payer.

b) Capacité de payer

Si l'on veut découvrir quels sont ceux qui ne paient pas et quel est le meilleur système pour résoudre ce problème, il est tout aussi important de tenir compte de la capacité du conjoint débiteur à effectuer les versements. La mesure directe de ce facteur est le revenu. Les répercussions de la capacité de payer (le revenu) sur les stratégies d'exécution sont manifestes. Par exemple, l'utilisation de méthodes particulières comme la saisie de salaire, la saisie ou l'emprisonnement n'éliminerait pas les cas de défauts de paiement découlant de l'incapacité de payer.

Les statistiques sur le revenu indiqueraient clairement quel pourcentage de débiteurs en défaut pourraient faire les versements. Ceci permettrait, au moins théoriquement, d'estimer le pourcentage des débiteurs à l'égard desquels les méthodes d'exécution, comme celles énumérées ci-dessus, pourraient réussir.

On pourrait alors établir des relations entre le revenu et le nombre de défauts de paiement à l'égard de chaque procédure judiciaire, afin de déceler les diverses causes du défaut de paiement. A partir de ces renseignements, on pourrait déterminer quelle méthode d'exécution serait la plus efficace.

- 3) Le succès des méthodes d'exécution. Il ne fait aucun doute que certaines méthodes d'exécution sont plus efficaces que d'autres. On n'a pas encore établi et vérifié de façon empirique quelles sont les méthodes les plus efficaces. Une étude suggère que certaines des meilleures méthodes d'exécution, comme la saisie de salaire et l'emprisonnement, pourraient susciter une résistance¹⁷ considérable de la part des débiteurs et donc augmenter le nombre de défauts de paiement. Une autre étude a prouvé que des avis fréquents et immédiats adressés au débiteur indiquant que l'État est au courant du défaut de paiement et l'avertissant des conséquences possibles, en conjonction avec des

méthodes rigoureuses d'exécution comme l'emprisonnement, diminuent substantiellement le nombre de défauts de paiement.¹⁸ Ainsi, des statistiques sur le succès obtenu par certaines méthodes d'exécution permettraient de mettre au point un système d'exécution plus rationnel.

Sommaire

Au minimum, il faudrait tenir des statistiques dans les domaines suivants:

- 1) Nombre total d'ordonnances de pension alimentaire émises
- 2) Nombre total de défauts de paiement par cas Ordonnances de pension alimentaire en règle
- 3) Défauts de paiement par type de tribunal 4) Revenu net 5) Défauts de paiement par méthode d'exécution

Ces données donneraient les renseignements les plus utiles pour mettre sur pied un régime plus efficace d'exécution. Ces renseignements portent non seulement sur l'exécution même, mais aussi sur les facteurs qui sont sources de défaut de paiement. Toute diminution du nombre de défauts de paiement réduirait également la nécessité de recourir à l'exécution.

Il y a cependant deux réserves importantes à la mise en oeuvre de ce système. Alors qu'à l'heure actuelle 10 systèmes différents sont en usage pour la cueillette des statistiques sur les pensions alimentaires, on ne recueille aucune statistique sur les ordonnances de garde.

Compte tenu de l'échéancier de la présente étude, le chercheur n'a pas pu évaluer quels renseignements devraient être recueillis sur les ordonnances de garde. Cependant, comme l'indique le tableau, on ne recueille nulle part de données systématiques sur les ordonnances de garde. Il

faudrait donc obtenir des données sur le nombre de violations des ordonnances de garde afin d'évaluer l'importance du problème et d'étudier rationnellement les façons d'améliorer l'exécution des ordonnances de garde.

Notes

1. A.S. Ross et M.J. Grant, An Evaluation of the St. Johns Unified Family Court Pilot Project, août 1982, p. 169.
 2. Entrevue, administrateur du Tribunal de la famille à juridiction intégrale.
 3. A.S. Ross et M.J. Grant, op. cit., p. 76.
 4. Entrevue avec le greffier du Tribunal de la famille à juridiction intégrale.
 5. Entrevue avec un membre du Comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant au Canada.
 6. Entrevue avec un adjoint de recherche de la Division de la recherche et de la planification du ministère de la Justice.*
 7. Entrevue avec le directeur des Services d'information du ministère du Procureur général. Note: Bien que la période de "grâce" varie d'une province à l'autre, le chercheur a pu confirmer que toutes les provinces où il y a exécution automatique accordent ce délai pour les versements en retard.*
 8. Entrevue avec l'agent d'exécution des ordonnances de pension alimentaire, Tribunal de la famille.*
 9. Entrevue avec le directeur du Service de conciliation matrimoniale.*
 10. Entrevue avec un membre du Comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant au Canada.*
 11. Ibid.
 12. Entrevue avec un membre du Comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant au Canada.
 13. Entrevue avec un agent de recherche du ministère du Procureur général.
 14. Ibid.
- * représentant provincial chargé de la cueillette des statistiques.

15. Frontenac Family Referral Service, Couples in Crisis 1980, p. 67.
16. Il y a quelques exceptions dignes de mention. Le Frontenac Family Referral Service, dans son ouvrage intitulé Couples in Crisis 1980, déclare que la conciliation laisse à l'homme des choix qui lui permettent de conserver sa dignité et son respect de soi (p. 17). Bon nombre de ceux qui n'ont pas eu l'avantage de la conciliation ne comprenaient pas que les sommes versées étaient affectées à l'entretien de leurs enfants (p. 57). 51% des ententes de conciliation, en comparaison de 27% des ordonnances du tribunal, faisaient l'objet de versements réguliers sans qu'il soit nécessaire de recourir à l'exécution (p. 67) et 25% des membres d'un groupe-échantillon où l'on avait recours à la fois à la conciliation et aux ordonnances du tribunal effectuaient leurs paiements en retard en comparaison de 52% d'un autre groupe où l'on avait eu recours qu'au tribunal (p. 62). C'est là une tentative de mesurer les effets des méthodes préventives à l'égard de l'exécution. Cette optique est également la base du rapport publié par the Institute of Law Research and Reform, Matrimonial Support Failures: Reasons Profiles and Perceptions of Individuals Involved.
17. The Institute of Law Research and Reform, ibid.
18. Chambers, D. Making Fathers Pay.

ANNEXE A

TABLEAUX DES STATISTIQUES DISPONIBLES PAR PROVINCE

TERRE-NEUVE



THE SUPREME COURT OF NEWFOUNDLAND
UNIFIED FAMILY COURT

GENERAL OFFICE
(709) 753-5873

21 King's Bridge Road
St. John's, Newfoundland
A1C 3K4

December 8, 1982.

Ms. Gina Alderson
731 Justice Building
Kent and Wellington
Ottawa, Ontario
K1A 0H8.

Ms. Alderson:

RE: Statistics RE Maintenance and Custody Orders

Further to our recent telephone conversations, I am forwarding this brief memo and status of maintenance collections at October 31, 1982.

The Unified Family Court, Supreme Court of Newfoundland, presently has 587 Ledger or Maintenance Accounts registered. Of these 587, 193 are in arrears, 52 are temporarily suspended, and the balance of 342 accounts are current. A total of 297 of the 587 accounts/clients are noted as also being recipients of Social Assistance through the Province's Department of Social Services. In October, 1982, \$50,069.00 was collected by the Unified Family Court and our yearly total will be approximately \$700,000.00.

Please do not hesitate to request more detailed information regarding the above. We will appreciate a written request with a precise detail of statistics necessary, if possible.

Yours truly,

A handwritten signature in cursive script, likely belonging to Carol O'Brien.

(Mrs.) Carol O'Brien,
Court Administrator,
Unified Family Court.

mlk/

cc: M. Noonan and
R. G. Penney, Department of Justice.

NOUVELLE-ÉCOSSE

PROVINCE OF NOVA SCOTIA
DEPARTMENT OF SOCIAL SERVICES
FAMILY AND CHILDREN'S SERVICES
FAMILY COURT FOR THE PROVINCE OF N. S.

REGION	COURT ORDERS		NO. OF COURT ORDERS RES- CINDED	NO. OF COURT VIOLATIONS	ACTIVE ORDERS	A M O U N T S	
	ACTIVE ORDERS	NO. OF INACTIVE ORDERS				A M O U N T S	
						TOTAL OF EXISTING ORDERS (Monthly)	DURING MONTH
HALIFAX /DARTMOUTH	2,796	235	662	1,101	\$371,679.25	332,250.91	3,532,427.95
CAPE BRETON	1,151	11	393	1,809	179,942.59	135,819.64	1,421,308.11
PORT HANESBURY	153	2	47	149	20,717.00	15,979.09	172,072.33
NORTH SHORE	844	202	196	372	112,985.00	87,792.00	892,257.00
CUNZERTLAND	244	47	72	138	22,539.00	20,749.33	212,060.20
CENTRAL	954	34	278	487	105,001.84	93,079.75	964,509.59
WESTERN	815	45	214	1,548	73,389.00	68,428.34	673,330.88
TOTALS	6,957	576	1,862	5,604	\$ 886,253.68	754,099.06	7,867,966.06

NOUVEAU-BRUNSWICK

FORM "D"

Date November 5, 1982

COURT OF QUEEN'S BENCH - FAMILY DIVISION

Maintenance and Enforcement
Monthly Record

Judicial District Fredericton For Month of October, 1982

1.	Number of cases carried forward	380
2.	Number of new maintenance cases during month	15
3.	Number of cases terminated	0
4.	Total bookkeeping caseload for month (1+2-3=4)	395

ADULT STATISTICS - COURT ADMINISTRATION

For Month of October, 1982 Judicial District Free

Activity	Criminal Code	Divorce Act				Marital Property	Judicature Act	Schools Act	Maintenance	Custody	Access	Adoption	Child Security	Parentage	Separation Agreement	Variation of Maintenance	Enforcement	Habeas Corpus	Infants Persons Act	Change of Name Act	Other
		Contested	Uncontested	Variation	REHO																
Information Laid	4																				
Plea - Guilty																					
Plea - Not Guilty																					
Application Filed		323	4	1		12	4	12	2	3	1	1			3						
Enforcement - Affidavit of Default			2												4						
Social Act Involvement (Pre-court)		1				8	3			1		1									

Disposition	CC	CCN	CCN	VAR	REMO	MPA	Jud	SA	Maint	Cus	Acc	Adopt	CS	Ant	Par	Agree	Sepp	Var	Enf	HC	IPA	CN	Other
Withdrawn	2		1			1			2	1			1					1					
Dismissed		1	1																				
Adjourned	2	3	2	1	2	8			1		1		6										
Final Order	1	5	25	3		1			8	1		8	1					6		1			
Consent Order			1	1		1			5	1													
Interim Order																							
Provisional Order Made																							
Provisional Order Confirmed					1																		
Foreign Order Enforced																							
Local Order - Foreign Enforcement																							
Warrant Issued	1								1														
Judgement Reserved						1			1	1													
Social Act Involvement		3	2	2		1			12	2								4					
Administrator's enforcement									5									8					
5. NO ORDER MADE					1				2									1	1				
6. NOT SERVED									2														

Total Number - Heard in

QUÉBEC

Greffé de: **TOTAL DES RÉGIONS**

Préparé par:

PL (918) 643-4045
Année: 1981

COUR SUPÉRIEURE (PERCEPTEUR DES PENSIONS ALIMENT.) SJ-005	JANV.	FÉV.	MARS	AVRIL	MAI	JUIN	JUILL.	AOUT	SEPT.	OCT.	NOV.	DEC.	TOTAL
1. DEMANDES ADRESSÉES AU PERCEPTEUR													
1.1 Par le créancier pour exécution locale	151	751	870	567	582	599	327	485	440	415	443	372	6,602
1.2 Par le créancier pour expédition à l'extérieur	144	235	250	170	124	98	66	84	107	82	90	60	8,510
1.3 Par un percepteur extérieur pour exécution locale	803	814	1047	823	710	701	403	578	615	526	534	429	8,019
	52	163	177	256	128	108	176	93	175	111	91	57	1,487
2. DEMANDES DU MINISTÈRE DES AFFAIRES SOCIALES													
2.1 Adressées au percepteur local pour exécution locale	-	1	35	5	-	1	3	2	-	4	130	171	352
2.2 Adressées au percepteur local pour expédition à l'extérieur	-	3	7	-	-	-	-	-	-	2	1	2	15
2.3 Provenant d'un percepteur extérieur pour exécution locale	-	-	12	-	-	1	-	1	-	-	5	4	23
3. REQUÊTES AUX FINS D'OBTENIR DES INFORMATIONS	7	18	51	90	220	21	19	24	19	18	26	13	526
4. BREFS DE SAISIE ÉMIS	244	432	502	466	499	568	696	379	522	411	387	312	5,418
4.1 Saisies-arrêts de traitements, salaires ou gages (art. 641 C.P.C.)	156	253	231	221	233	260	357	192	257	247	200	181	2,788
4.2 Autres saisies-arrêts (art. 625 C.P.C.)	29	54	74	54	49	70	86	43	55	61	72	62	709
4.3 Saisies mobilières (art. 500 C.P.C.)	56	114	188	180	206	224	246	138	198	97	110	64	1,821
4.4 Saisies immobilières (art. 660 C.P.C.)	3	11	9	11	11	14	7	6	12	6	5	5	100
5. MODE DE SIGNIFICATION													
5.1 Huissier	161	282	380	282	240	401	726	325	408	338	389	277	4,209
5.2 Courrier	212	362	353	415	358	305	29	223	274	262	276	239	3,308
5.3 Journaux	-	-	1	-	-	2	-	-	3	-	-	-	6

titre de: TOTAL DES RÉGIONS

Préparé par:

Année:

COUR SUPÉRIEURE (PERCEPTEUR DES PENSIONS ALIMENT.) SJ-005	JANV.	FEV.	MARS	AVRIL	MAI	JUIN	JUILL.	AOUT	SEPT.	OCT.	NOV.	DÉC.	TOTAL
6. BREFS EFFICACES	25	85	137	121	122	174	95	134	176	156	145	96	1,466
7. OPPOSITIONS	7	70	122	109	113	112	211	192	175	152	116	88	1,467
8. CONTESTATIONS D'OPPOSITIONS	-	22	69	59	69	51	104	119	107	119	112	109	940
9 RECHERCHES ADRESSEES AU SERVICE DES RECLAMATIONS													
9.1 Demandes	21	91	97	85	227	84	128	91	134	80	60	42	1,140
9.2 Réponses positives	-	-	-	6	26	9	53	95	33	141	102	43	508
9.3 Réponses négatives	-	-	1	5	26	13	28	78	17	70	56	14	308
10. PENSIONS DISTRIBUEES (1)	1421	13858	23036	54538	53685	116144	86985	94576	97470	68695	89455	94949	794,818.23

(1) Moins région 06

ONTARIO

PROVINCIAL COURT (FAMILY DIVISION) ACTIVITY SUMMARY									
C.M.A.		C.M.A. <--J.D.A.-->		PER		CHG		F.L.R.A. C.C.C.	
2742		4292		175		7457		480	
OPENING BALANCE									
TOTAL MATTERS RECEIVED		19946		31522		1121		43232	
APPLICATIONS/INFORMATION		19929		530		59		2926	
WARRANTS EXECUTED		17		30392		1062		22706	
CHARGES/ ENFORCEMENT									
TOTAL MATTERS DISPOSED		19973		20205		939		41990	
ORDERS/CHARGES		13575		16427		666		13447	
PROVISIONAL ORDERS MADE									
PROVISIONAL ORDERS CONF									
ENFORCEMENT ORDERS									
REVIEW/VARIATION									
OTHER ORDERS									
DISMISSED		196		731		1209		18	
WITHDRAWN		1096		2304		5732		111	
TRANSFER OUT		35		163		392		3	
WARRANTS GROUPED		30		550		1099		60	
ADJOURNMENTS		8592		3270		36674		137	
NOTIONS		1048							
REPRESENTED/CONTESTED		3309							
INTERIM/TEMPORARY ORDER		2433							
ASSESSMENT ORDERS		114							
CLOSING BALANCE 2715 3200 331 8759 450 513 30 656									
DISPOSITION AGING C.M.A. JUVEN <FAM>									
UNDER 31 12543 12220 16364									
31 - 40 3527 7224 15926									
41 - 50 1453 3742 6005									
51 - 60 714 2227 2800									
OVER 120 1435 4040 4507									
REPORTS JUVEN OTHER									
PRE-SENTENCE/SOCIAL HIST 1475 73									
PSYCHOLOGICAL/PSYCHIATRIC 1144 143									
CURRENT ACTS									
OPENING BAL 40262 10814 25626									
CLOSED 12182 5010 8375									
DORMANT 4790 1342 2409									
CLOSING BAL 44180 10332 28781									
MAINTEN COLLECTED \$ TO GOVT									
ACCS 54041787 6370,510									
ANALYSIS OF ORDERS MADE UNDER CWA JDA AND EDUCATION ACT									
C.M.A. (PERSONS)									
SUPERVISION									
SOCIETY JARSHIP									
CROWN JARSHIP									
ADOPTION ORDERS									
OTHER ORDERS									
TOTAL CWA ORDERS									
TEMPORARY ORDERS									
ASSESSMENT ORDERS									
INDICATES THESE LINES NOT INCLUDED IN TOTAL MATTERS DISPOSED									

MANITOBA

MINNEAPOLIS SECURITY MAINTENANCE ORDER FINANCIAL
STATISTICS BY REGIONAL OFFICE

PAGE 01

STATISTICS BY REGIONAL OFFICE	PREVIOUS MONTHS	DATE: 82 SEP 30		YEAR-TO-DATE TOTAL	ARREARS TOTAL	YTD. & ARR. TOTAL
		CURRENT MONTH				
		DIRECT PAYMENTS TO PAYEE				
MINNEPIEO REGION	\$45,380.60CR	\$7,622.50CR	\$53,003.10CR	137,672.62		190,675.72
WESTIAN REGION	\$5,815.00CR	\$425.00CR	\$6,300.00CR	\$65,665.00		\$71,965.00
EASTIAN REGION	\$1.00	\$1.00	\$1.00	\$1.00		\$1.00
CENTRAL REGION	\$2,320.00CR	\$290.00CR	\$2,610.00CR	\$24,940.00		\$27,550.00
INTERLAKE REGION	\$1.00	\$1.00	\$1.00	\$1.00		\$1.00
PARKLANDS REGION	\$40.00CR	\$1.00	\$40.00CR	\$40.00		\$80.00
NORMAN REGION	\$2,250.00CR	\$300.00CR	\$2,550.00CR	\$1,200.00CR		\$1,350.00
THOMPSON REGION	\$801.00CR	\$1.00	\$801.00CR	\$375.00		\$1,176.00
PAYMENTS TO MINISTER OF FINANCE						
MINNEPIEO REGION	234,172.50CR	\$31,915.00CR	266,087.50CR	609,747.83		875,835.41
WESTIAN REGION	\$40,548.00CR	\$6,290.00CR	\$46,838.00CR	190,740.72		237,578.72
EASTIAN REGION	\$9,977.50CR	\$450.00CR	\$10,427.50CR	\$27,337.50		\$38,165.00
CENTRAL REGION	\$7,090.50CR	\$1,330.00CR	\$8,420.50CR	\$28,785.30		\$37,205.90
INTERLAKE REGION	\$15,287.79CR	\$2,105.00CR	\$17,392.79CR	\$73,140.00		\$90,532.79
PARKLANDS REGION	\$14,429.00CR	\$2,075.00CR	\$16,504.00CR	106,380.00		122,884.00
NORMAN REGION	\$4,960.00CR	\$3,670.00CR	\$8,630.00CR	\$60,380.00		\$69,010.00
THOMPSON REGION	\$11,405.34CR	\$1,170.55CR	\$12,575.89CR	115,492.22		128,068.11
TOTALS	394,537.31CR	\$58,043.05CR	452,580.36CR	439,496.19		892,076.55

ADULT MAINTENANCE ORDER CASELOAD MOVEMENT STATISTICS BY TYPE OF ORDER

STATE OF CALIFORNIA - DEPARTMENT OF SOCIAL SERVICES

PAGE 01

DATE: 32 SEP 30

	R.E.A.O. R.E.M.O.		REG.		TOTAL	
	IN	OUT	CASES	CASES	CASES	CASES
DECREE nisi	169	536	2017	2822	304	
MAINTENANCE ORDERS	146	417	2263	2826	434	
OTHER ORDERS		2	12	14	9	
FILIALION ORDERS	6	6	137	149	23	
CHILD WELFARE ACT ORDERS		2	13	15		
OTHER ORDERS	2	3	257	262	42	
	323	1066	4699	6088	812	

SASKATCHEWAN



Saskatchewan
Attorney General

City Hall
2476 Victoria Avenue
Regina, Canada
S4P 3V7

November 15, 1982.

3858 G

Ms. Gina Alderson,
c/o Department of Justice,
Ottawa, Ontario.
K1A 0H8

Dear Ms. Alderson:

Re: Federal/Provincial Committee on Maintenance
and Custody Order Enforcement - Subcommittee
on Cataloguing of Information.

Unfortunately Saskatchewan does not maintain statistics separate from the various and scattered court files on the above matters, therefore, the following material is offered in the hope that by reference to this smattering of figures one can draw some general inferences.

Actions Commenced by Originating Motion:

<u>Unified Family Court in Saskatoon</u>	1979	1980	1981
Divorce Act	658	795	734
Married Persons Property Act and Matrimonial Property Act	143	236	250
Deserted Wives' and Children's Maintenance Act	129	135	132
Infants Act	126	200	229
Children of Unmarried Parents Act	21	33	34
Others (including Extra-Provincial Custody Order Enforcement Act and applications under s. 11(2) and 15 of the Divorce Act)	<u>30</u>	<u>78</u>	<u>115</u>
	1,107	1,477	1,494

Queen's Bench - Regina

Divorce Act	589	611	622
-------------	-----	-----	-----

I estimate that approximately 50% of the cases under this legislation come before the courts in either Saskatoon or Regina. Additionally, as Regina and Saskatoon have comparable populations all other statistics gathered for Saskatoon can probably be assumed to be similar for Regina. However, I believe the Unified Court concept with the added feature of counselling services may lead to the initiation of more cases in that jurisdiction.

Additionally, I think one could assume that at least 50 - 60 % of the Divorce matters involve children and questions of maintenance.

The Deserted Wives and Children of Unmarried Parents actions involve maintenance, whereas the Infants Act applications related to custody and, perhaps, concurrently to maintenance.

The Department of the Attorney General appears for enforcement hearings in R.E.M.O. matters and our solicitors estimate that between 190 - 200 confirmation hearings or enforcement hearings may be scheduled each year divided between Regina and Saskatoon. In the rest of the Province, we hire Agents to represent the Attorney General. Presently, maintenance matters under R.E.M.O. are scheduled at least once a month in each major centre with an average of 8 cases on the list.

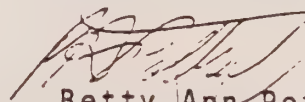
The Department of the Attorney General opened 80 files under R.E.M.O. (out-going and in-coming files) in the first 8 months of 1981 and opened 102 files in the first 10 months of 1982.

One study by the Department of Social Services which is a year or two old estimates that approximately 1/3 of all attempts in Saskatchewan to obtain maintenance are abandoned or fail because the applicant is unable to trace the defaulting spouse.

As we have no automatic enforcement system for maintenance enforcement at this time and as the court orders do not generally require the payments to be made to the courts, we have no available statistics on the level of default on maintenance orders in Saskatchewan.

I trust this information may be of some help to you.

Yours truly,



Betty Ann Pottruff,
Co-ordinator, Legal
Services for Social Services.

COLOMBIE-BRITANNIQUE

AUTOMATIC ENFORCEMENT OF MAINTENANCE ORDERS

	Region 1 Number of Payments Received			Region 5 Number of Payments Received		
	<u>Received</u>	<u>% Rec'd On File</u>	<u>On File</u>	<u>Received</u>	<u>% Rec'd On File</u>	<u>On File</u>
1978						
August	1,119	N/A	N/A	788	N/A	N/A
1979						
January	1,208	80	1,519	880	67	1,307
1980						
January	1,475	78	1,885	945	70	1,351
1981						
January	1,494	79	1,898	995	66	1,505
February	1,473	75	1,966	943	63	1,502
March	1,585	81	1,944	1,055	67	1,563
April	1,416	79	1,800	1,026	67	1,490
May	1,464	77	1,892	981	64	1,513
June	1,438	80	1,778	1,094	73	1,505
July	922	63	1,467	618	42	1,482
August	1,252	75	1,668	982	61	1,618
September	1,292	71	1,820	1,006	62	1,636
October	1,369	75	1,814	1,105	65	1,704
November	1,371	76	1,807	899	58	1,563
December	1,446	80	1,804	987	62	1,591
1982						
January	1,343	73	1,845	869	56	1,557
February	1,371	73	1,840	836	54	1,563
March	1,601	85	1,891	1,168	65	1,795
April	1,387	80	1,723	929	57	1,643
May	1,318	77	1,715	855	54	1,580
June	1,323	75	1,774	915	56	1,642
July	1,266	74	1,703	877	54	1,636
August	1,251	74	1,683	780	48	1,616
September	1,199	72	1,656	816	49	1,667
October	1,273	74	1,716	834	50	1,674

N/A - Not Available

ANNEXE B
LISTE DES ENTREVUES

1. Membre du Comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant au Canada, Terre-Neuve.
2. Fonctionnaire du ministère de la Justice de Terre-Neuve.
3. Administrateur du Tribunal de la famille à juridiction intégrale, Saint-Jean (Terre-Neuve).
4. Greffier adjoint de la Cour suprême de Terre-Neuve.
5. Juge en chef adjoint de la cour provinciale de Terre-Neuve.
6. Membre du Comité fédéral provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant au Canada, Île-du-Prince-Édouard.
7. Greffier du Tribunal de la famille, Cour suprême de l'Île-du-Prince-Édouard.
8. Membre du Comité des agents de liaison pour la statistique, Île-du-Prince-Édouard.
9. Membre du Comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant au Canada, Nouvelle-Écosse.
10. Superviseur des services spéciaux de protection du ministère des Services sociaux de la Nouvelle-Écosse.
11. Membre du Comité fédéral-provincial sur l'exécution des ordonnances de garde et de pension alimentaire au Canada, Nouveau-Brunswick.
12. Assistant de recherche, Division de la recherche et de la planification, ministère de la justice, Nouveau-Brunswick.
13. Administrateur de la Cour du Banc de la reine du Nouveau-Brunswick.
14. Greffier de la Cour du Banc de la reine du Nouveau-Brunswick.
15. Membre du Comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant au Canada, Québec.

16. Responsable des systèmes de gestion, Direction générale des services judiciaires, Gouvernement du Québec.
17. Membre du Comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant au Canada, Ontario.
18. Directeur des Services d'information, ministère du Procureur général de l'Ontario.
19. Membre du Comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant au Canada, Manitoba.
20. Agent d'exécution des ordonnances de pension alimentaire, Tribunal de la famille, Manitoba.
21. Directeur du Service de conciliation matrimoniale du ministère des Services communautaires et des corrections du Manitoba.
22. Membre du Comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant au Canada, Saskatchewan.
23. Membre du Comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant au Canada, Colombie-Britannique.
24. Agent de recherche et de planification, ministère du Procureur général, Colombie-Britannique.
25. Membre du Comité fédéral-provincial sur l'exécution des ordonnances de garde et de pension alimentaire au Canada, Canada.
26. Analyste des politiques juridiques, Condition féminine Canada.
27. Agent de formation et de liaison, Centre canadien de la statistique juridique, Statistique Canada.

RAPPORT SUR LA CRÉATION D'UN
REGISTRE CENTRAL DES ORDONNANCES
DE PENSION ALIMENTAIRE ET
DE GARDE D'ENFANTS

ANNEXE E

Registre central

I Introduction

Les représentants fédéraux du sous-comité sur les renseignements sont convenus d'examiner la recommandation de créer un registre central. Gina Alderson s'est penchée sur cette question, et le présent document se fonde sur son travail. Un résumé du présent document d'information a été présenté au Comité fédéral-provincial sur l'exécution des ordonnances de pension alimentaire et de garde d'enfant lors de la réunion que celui-ci a tenue à Toronto en janvier 1983.

Les représentants du Comité fédéral-provincial, ainsi que d'autres personnes que ceux-ci avaient suggéré de contacter, ont été consultés afin de définir les objectifs d'un registre central. La question de savoir si les objectifs pouvaient être atteints grâce à la création d'un registre central a alors été prise en considération.

II Historique

L'un des moyens proposés pour améliorer l'exécution des ordonnances alimentaires est la création d'un registre central, sur le modèle du Bureau central des divorces, où seraient inscrites toutes les ordonnances relatives au versement d'une pension alimentaire ou à la garde des enfants. Cette possibilité a été mentionnée par Condition féminine Canada dans sa publication de 1979 intitulée "Femme en voie d'égalité" ainsi que par le gouvernement manitobain dans son "Position Paper on Family Law and the Constitution" (1980)(Annexe A).

Le registre central que décrit le document du Manitoba serait plus qu'un simple lieu de dépôt des ordonnances. Il s'agirait en effet d'un réseau national de registres dans lesquels toutes les ordonnances alimentaires seraient inscrites, ce qui leur conférerait un effet juridique immédiat et les rendrait exécutoires partout au Canada sans qu'il soit besoin de les enregistrer à nouveau dans chaque province. Le registre constituerait un système centralisé de contrôle et d'exécution des ordonnances considérées.

Dans son rapport provisoire du 13 octobre 1981, le Comité fédéral-provincial a dit douter que certaines mesures, comme le système national d'exécution, puissent être facilement réalisées à court terme. Toutefois, le Comité a retenu la recommandation de créer un registre central qui permettrait

de vérifier la situation des ordonnances, et d'utiliser les renseignements obtenus pour procéder à la recherche de précédents ainsi que pour favoriser l'uniformité des jugements sur les pensions alimentaires et la garde des enfants en établissant des critères communs ou appropriés.

III Objectifs

Voici quels pourraient être les objectifs d'un registre central:

(1) Déterminer rapidement la situation d'une ordonnance

En ce qui concerne l'exécution d'une ordonnance provenant d'une autre province, il est nécessaire de déterminer rapidement et avec précision si l'ordonnance originale a été modifiée.

(2) Fournir des lignes directrices applicables aux ordonnances alimentaires

Le montant accordé à titre de pension alimentaire varie selon les régions. Des lignes directrices fondées sur une étude comparative de l'ensemble des ordonnances serait utile pour faciliter l'établissement de normes uniformes sur lesquelles pourraient se fonder les tribunaux lorsqu'ils rendent des ordonnances de pension alimentaire.

Outre les différences régionales relatives au montant des pensions alimentaires accordées, on note parmi les autres problèmes qui se posent en la matière le montant généralement peu élevé des pensions alimentaires octroyées ainsi que la modification des ordonnances prononcées dans une autre province afin de réduire le montant accordé, prétendument sans raison suffisante.

(3) Déterminer quelles sont les procédures d'exécution efficaces et uniformiser les mesures d'exécution

Puisque les lois et procédures d'exécution en matière de pension alimentaire et de garde d'enfant varient selon les provinces, il serait utile de déterminer les procédures les plus efficaces et d'en promouvoir l'application uniforme partout au pays.

(4) Établir un système national d'exécution

Le Manitoba a proposé, en 1980, la mise en place d'un système centralisé d'enregistrement et d'exécution de toutes les ordonnances relatives au versement d'une

pension alimentaire ou à la garde d'enfant. L'extrait suivant provient du document établi sur le sujet par le Manitoba:

"Par exemple, le gouvernement fédéral pourrait établir un registre central, avec un réseau de registres subsidiaires dans chaque province. Une fois l'ordonnance rendue et enregistrée dans un registre subsidiaire, elle serait enregistrée d'office dans le fichier central et serait immédiatement applicable dans tout le Canada, sans qu'il soit nécessaire de faire un autre enregistrement. A l'heure actuelle, il existe un registre central des ordonnances de divorce. Le Manitoba propose d'étendre ce concept afin d'y inclure toutes les ordonnances de garde et de pension alimentaire et, qui plus est, de fournir un système centralisé en vue du contrôle et de l'exécution de ces ordonnances. Le système envisagé permettrait d'atteindre une uniformité des normes, de la procédure et des recours applicables à travers le pays.

Le registre centralisé renfermerait aussi une banque fédérale-provinciale de données pour faciliter la recherche rapide et efficace des conjoints en défaut et des enfants enlevés."

IV Un registre central peut-il atteindre ces objectifs?

(1) Détermination de la situation d'une ordonnance:

Un registre central dans lequel toutes les ordonnances devraient légalement être inscrites permettrait d'assurer un accès rapide aux renseignements relatifs à la situation d'une ordonnance, c'est-à-dire de savoir si celle-ci a été modifiée. Les délais entraînés par la recherche de ces renseignements par les parties seraient réduits d'autant, particulièrement dans le cas de l'exécution d'une ordonnance provenant d'une autre province, alors que l'une des parties peut ne pas être présente devant le tribunal pour fournir de tels renseignements ou s'il s'avère nécessaire de vérifier ceux-ci.

Bien que l'utilité d'un tel service soit évident, on ne dispose présentement d'aucun renseignement précis sur les dépenses de temps et d'argent qu'entraînent les délais qu'exige la détermination de la situation d'une ordonnance. Par conséquent, la question de savoir si l'utilité de ce service en justifierait le coût reste en suspens.

(2) Établissement de lignes directrices en matière de pension alimentaire

Il faudrait, pour atteindre cet objectif, que le rôle de conservation d'un registre central soit étendu afin d'englober une banque de données plus sophistiquée et des fonctions d'analyse de données plus évoluées. Même dans ce cas, il n'est pas certain que de telles lignes directrices seraient appliquées de façon uniforme.

Il convient, afin d'en arriver à une certaine uniformité dans l'octroi des pensions alimentaires, de déterminer sur quoi se fonde le choix d'un critère plutôt que d'un autre. Par conséquent, les divers facteurs dont il est tenu compte pour rendre ces ordonnances doivent être pris en considération. Les facteurs sur le fondement desquels chacune des ordonnances est rendue devront être déterminés et comparés afin de voir si, parmi ceux-ci, il existe un dénominateur commun. Puisque les ordonnances sont rendues sous différentes lois et à différents niveaux de tribunaux, le registre devrait grouper les ordonnances rendues selon des lois semblables, par des tribunaux d'un même niveau, afin de pouvoir déterminer le nombre de cas d'inexécution dans chacun des groupes. Il faudrait également obtenir des données supplémentaires sur les contraintes extérieures, telles les disparités régionales dans les revenus.

L'absence actuelle de statistiques recueillies selon des critères uniformes d'une province à l'autre, ou même au sein de chaque province, sur le nombre de personnes en défaut de satisfaire aux ordonnances alimentaires constitue un problème. La collecte de statistiques dépendrait évidemment de la bonne volonté et des fonds disponibles dans chacune des provinces.

Même si l'on en arrivait à dégager certains dénominateurs communs de l'attribution des pensions alimentaires, cela ne servirait qu'à établir un montant moyen mais pas nécessairement le montant souhaitable de la pension. Étant donné que les pensions alimentaires accordées sont généralement considérées comme faibles, les provinces devraient s'engager à augmenter celles-ci. Un tel accord pourrait s'avérer difficile à réaliser, puisque certaines provinces estiment que les disparités régionales dans le niveau des pensions accordées peuvent se justifier.

(3) Méthode uniforme d'exécution

La détermination de la procédure la plus efficace d'exécution des ordonnances relatives au versement d'une pension alimentaire ou à la garde d'enfant laisse supposer que l'on peut choisir une procédure plutôt qu'une autre. Cela exige une évaluation des mécanismes d'exécution. Pour ce faire, il faudrait tenir compte des statistiques sur le nombre total d'ordonnances rendues sous chacun des types de loi en matière d'exécution, et du nombre total de personnes en défaut pour chacun d'eux. A moins que de telles statistiques puissent être obtenues autrement, le registre central devrait alors faire la cueillette des données, avant de pouvoir déterminer laquelle des procédures ou des lois d'exécution est préférable et d'en recommander l'application uniforme. Là encore, cette application uniforme exigerait la collaboration de chacune des provinces et de chacun des territoires.

La cueillette et l'analyse des données exigeraient des ressources additionnelles. Toutefois, il ne serait peut-être pas nécessaire, pour déterminer le processus d'exécution qui serait préférable ou pour dégager les tendances en matière d'exécution, de procéder à la cueillette des données sur une base continue. Une cueillette des données qui s'effectuerait sur une courte période pourrait s'avérer suffisante et moins onéreuse.

Comme l'une des raisons expliquant le manque actuel de mesures d'exécution efficaces est le manque de fonds nécessaires pour mettre en place des systèmes d'exécution plus étendus, et notamment des procédures de recouvrement, des ressources additionnelles seraient nécessaires pour mettre en oeuvre les mesures d'exécution désirées, là où elles n'existent pas.

(4) Système national d'exécution

Puisque le Comité fédéral-provincial a décidé de ne pas donner suite à cette idée d'un registre central parce qu'il ne peut être mis sur pied facilement à courte échéance, elle n'a fait l'objet d'aucune autre étude à ce jour.

V Autres facteurs

D'autres facteurs, dont les suivants, doivent être pris en considération:

- (1) La vie privée - Le fait de recueillir de façon systématique des renseignements personnels, autres que ceux qui se retrouvent habituellement dans les

ordonnances judiciaires, et d'en permettre l'accès à des inconnus, soulève certaines inquiétudes à propos de ces renseignements, de l'exactitude de ceux-ci, et du droit des particuliers d'en vérifier l'exactitude. Certains se sont même demandés si une telle cueillette de données ne serait pas inconstitutionnelle.

- (2) Utilisation d'un registre central - Il faudrait déterminer les personnes qui auraient accès au registre central et les conditions auxquelles elles y auraient accès. L'emplacement d'un registre central, ainsi que la détermination de ceux qui en auraient le contrôle, devront également faire l'objet de discussions.
- (3) Frais - Jusqu'ici nous n'avons pas abordé directement la question des frais. Le succès d'un registre central repose sur la collaboration fédérale-provinciale de même que sur la collaboration interprovinciale.

Il faudrait déterminer la structure administrative que pourrait avoir le registre central. De l'équipement informatisé de traitement de données sera probablement nécessaire. Par conséquent des facteurs comme l'existence d'équipement compatible de traitement de données ou les frais d'installation du nouvel équipement auraient une incidence sur les frais d'établissement. Dans une province comme le Manitoba, qui a déjà un système d'exécution informatisé, les frais d'établissement seraient moindres. A Terre-Neuve où, exception faite du Tribunal de la famille à juridiction intégrale, il n'y a aucun système informatisé d'exécution, les frais pourraient se révéler assez substantiels.

Au palier fédéral, si le registre actuel des divorces pouvait être modifié pour y incorporer le registre des ordonnances de pension alimentaire et de garde d'enfant, les frais seraient moindres.

- (4) Dédoubllement des services - Le Centre canadien de la statistique juridique est présentement en négociation avec les provinces relativement à la cueillette de statistiques dans de nombreux domaines, dont celui des pensions alimentaires. Tout dédoublement de services devrait être évité autant que possible. En outre, les demandes de cueillette de statistiques en matière de pension

alimentaire et de garde d'enfant devraient, dans la mesure du possible, être combinées à celles du C.C.S.J., afin d'éviter de surcharger ceux qui fournissent ces statistiques.

VI Conclusion

Un registre central où seraient inscrites les ordonnances de pension alimentaire ou de garde d'enfant rendues accessoirement sous la Loi sur le divorce ou en vertu de la loi provinciale, constituerait une source de renseignements fiable et facilement accessible pour déterminer si les ordonnances initiales ont été modifiées. Ce système faciliterait l'exécution en réduisant les délais de détermination de la situation des ordonnances.

Toutefois, pour être en mesure d'établir des lignes directrices relatives aux ordonnances alimentaires, des données supplémentaires seraient nécessaires. Compte tenu du problème de la faiblesse des pensions alimentaires accordées et de celui des disparités régionales, l'établissement de lignes directrices serait d'une utilité limitée, à moins que les provinces ne s'engagent à les suivre et, s'il y a lieu, à modifier le montant des pensions octroyées. Par conséquent, la détermination de dénominateurs communs ne permettra pas à elle seule d'atteindre les résultats recherchés.

L'objectif consistant à déterminer les procédures d'exécution efficaces et à favoriser l'uniformité en la matière serait également difficile à atteindre. Il n'existe toujours pas de statistiques complémentaires permettant de déterminer le meilleur système d'exécution. Dans de nombreuses provinces, on ne voit du reste pas venir le jour où de telles statistiques seront réunies. Un registre central dépourvu de ces statistiques complémentaires ne serait pas en mesure d'atteindre cet objectif.

Le seul objectif qu'un registre central pourrait réellement atteindre en l'état actuel des choses serait de déterminer la situation des ordonnances. Toutefois, le coût de ce mécanisme reste à déterminer. Les deux autres objectifs exigeraient un examen plus approfondi.

Le Comité fédéral-provincial a reconnu, lors de sa réunion de janvier 1983, que le fait de disposer d'un moyen de vérifier la situation des ordonnances serait utile en soi et que, dans cette pratique, la possibilité d'instituer un registre central devrait faire l'objet d'une étude plus détaillée.

ANNEXE "F"

DECRET SUR LES PASSEPORTS CANADIENS

24 juin 1981

Registration
SI/81-86 24 June, 1981

Enregistrement
TR/81-86 24 juin 1981

OTHER THAN STATUTORY AUTHORITY

AUTORITÉ AUTRE QUE STATUTAIRE

Canadian Passport Order

Décret sur les passeports canadiens

P.C. 1981-1472 4 June, 1981

C.P. 1981-1472 4 juin 1981

His Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs, is pleased hereby to revoke the Canadian Passport Regulations, C.R.C., c. 641, and to make the annexed Order respecting Canadian passports in substitution therefor.

Sur avis conforme du secrétaire d'État aux Affaires extérieures, il plaît à Son Excellence le Gouverneur général en conseil d'abroger le Règlement des passeports canadiens, C.R.C., c. 641 et de prendre en remplacement le Décret concernant les passeports canadiens, ci-après.

ORDER RESPECTING CANADIAN PASSPORTS

DÉCRET CONCERNANT LES PASSEPORTS
CANADIENS

Short Title

Titre abrégé

1. This Order may be cited as the *Canadian Passport Order*.

1. Le présent décret peut être cité sous le titre: *Décret sur les passeports canadiens*.

Interpretation

Définitions

2. In this Order,

2. Dans le présent décret,

"Act" means the *Citizenship Act*; (*Loi*)

«ancienne Loi» désigne la *Loi sur la citoyenneté canadienne*; (*former Act*)

"applicant" means a person who has attained sixteen years of age who applies for a passport or a person who has attained sixteen years of age who applies for the inclusion of the name of a child in that person's passport; (*requérant*)

«Bureau des passeports» désigne le service du ministère des Affaires extérieures, où qu'il se trouve, que le Ministre a chargé de la délivrance, de la révocation, de la retenue, de la récupération et de l'utilisation des passeports; (*Passport Office*)

"former Act" means the *Canadian Citizenship Act*; (*ancienne Loi*)

«Loi» désigne la *Loi sur la citoyenneté*; (*Act*)

"Minister" means the Secretary of State for External Affairs; (*Ministre*)

«Ministre» désigne le secrétaire d'État aux Affaires extérieures; (*Minister*)

"passport" means an official Canadian document that shows the identity and nationality of a person for the purpose of facilitating travel by that person outside Canada; (*passport*)

«passeport» désigne un document officiel canadien qui établit l'identité et la nationalité d'une personne afin de faciliter les déplacements de cette personne hors du Canada; (*passport*)

"Passport Office" means a section of the Department of External Affairs, wherever located, that has been charged by the Minister with the issuing, revoking, withholding, recovery and use of passports. (*Bureau des passeports*)

«requérant» désigne une personne âgée d'au moins seize ans qui demande un passeport ou qui demande l'inscription du nom d'un enfant dans son passeport. (*applicant*)

Issuance of Passports

Délivrance des passeports

3. Every passport

3. Chaque passeport

(a) shall be in a form prescribed by the Minister;

a) doit être émis selon la forme prescrite par le Ministre;

(b) shall be issued in the name of the Minister on behalf of Her Majesty in right of Canada;

b) doit être délivré au nom du Ministre agissant au nom de Sa Majesté du chef du Canada;

(c) shall at all times remain the property of Her Majesty in right of Canada;

c) demeure en tout temps la propriété de Sa Majesté du chef du Canada;

(d) shall be issued on the condition that the bearer will return it to the Passport Office forthwith when requested to do so by that office;

d) est délivré à condition que le titulaire le retourne immédiatement au Bureau des passeports à la demande de ce Bureau;

(e) shall be signed by the person to whom it is issued; and

e) doit être signé par la personne à laquelle il est délivré; et

(f) shall, unless it is sooner revoked, expire not later than five years from the date on which it is issued.

4. (1) Subject to this Order, any person who is a Canadian citizen under the Act may be issued a passport.

(2) No passport shall be issued to a person who is not a Canadian citizen under the Act.

5. No passport shall be issued to any person and no name of a child shall be included in the passport of any person unless an application for a passport is made by that person to the Passport Office in a form prescribed by the Minister.

6. An application for a passport by or in respect of a person who was

(a) born in Canada shall be accompanied by

- (i) a certificate of Canadian citizenship granted or issued to the person under the Act or the former Act,
- (ii) a certificate of naturalization granted to the person under any Act that was in force in Canada at any time before the 1st day of January, 1947,
- (iii) a certificate of birth issued to the person by a province or by a person authorized by a province to issue such certificates, or
- (iv) a certificate that indicates the date and place of the birth of the person in Quebec, duly issued by a person authorized under the law of Quebec to issue such certificates; or

(b) born outside Canada shall be accompanied by

- (i) a certificate of Canadian citizenship granted or issued to the person under the Act or the former Act,
- (ii) a certificate of naturalization granted to the person under any Act that was in force in Canada at any time before the 1st day of January, 1947,
- (iii) a certificate of registration of birth abroad issued to the person by the Registrar of Canadian Citizenship pursuant to the former Act, or
- (iv) a certificate of retention of Canadian citizenship issued to the person by the Registrar of Canadian Citizenship pursuant to a declaration of retention of Canadian citizenship made by the person pursuant to regulations made under the former Act.

7. (1) Subject to subsections (2) to (4), where a child has not attained sixteen years of age,

(a) the child may be issued a passport if the applicant therefor is

- (i) the parent of the child,
- (ii) where the parents of the child are divorced or separated, the custodial parent, or
- (iii) the legal guardian of the child; or

(b) the name of the child may be included in the passport of the applicant if the applicant is a person referred to in subparagraph (a)(i) or (ii).

f) expire au plus tard cinq ans après la date de délivrance, sauf en cas de révocation antérieure.

4. (1) Sous réserve du présent décret, un passeport peut être délivré à toute personne qui est citoyen canadien en vertu de la Loi.

(2) Aucun passeport n'est délivré à une personne qui n'est pas citoyen canadien en vertu de la Loi.

5. Un passeport n'est délivré à une personne et le nom d'un enfant n'est ajouté dans le passeport de cette personne que si une demande de passeport est présentée par cette personne au Bureau des passeports selon la forme prescrite par le Ministre.

6. Une demande de passeport présentée par une personne ou à l'égard d'une personne

a) née au Canada, doit être accompagnée

- (i) d'un certificat de citoyenneté canadienne accordé ou délivré à la personne en vertu de la Loi ou de l'ancienne Loi,
- (ii) d'un certificat de naturalisation délivré à la personne en vertu d'une loi qui était en vigueur au Canada à une date quelconque avant le 1^{er} janvier 1947,
- (iii) d'un acte de naissance délivré à la personne par une province ou par une personne autorisée par une province à délivrer de tels actes, ou
- (iv) d'un certificat établissant la date et le lieu de naissance de la personne au Québec et dûment délivré par une personne autorisée en vertu de la loi du Québec à délivrer de tels certificats; ou

b) née en dehors du Canada, doit être accompagnée

- (i) d'un certificat de citoyenneté canadienne accordé ou délivré à la personne en vertu de la Loi ou de l'ancienne Loi,
- (ii) d'un certificat de naturalisation délivré à la personne en vertu d'une loi qui était en vigueur au Canada à une date quelconque avant le 1^{er} janvier 1947,
- (iii) d'un certificat d'enregistrement de naissance à l'étranger délivré à la personne par le Registraire de la citoyenneté canadienne conformément à l'ancienne Loi, ou
- (iv) d'un certificat de rétention de la citoyenneté canadienne délivré à la personne par le Registraire de la citoyenneté canadienne en vertu d'une déclaration de rétention de la citoyenneté canadienne faite par la personne conformément aux règlements établis en vertu de l'ancienne Loi.

7. (1) Sous réserve des paragraphes (2) à (4), si l'enfant a moins de seize ans,

a) il peut se voir délivrer un passeport si le requérant est

- (i) l'un de ses parents,
- (ii) le parent qui a la garde de l'enfant, lorsque les parents sont divorcés ou séparés, ou
- (iii) le tuteur de l'enfant; ou

b) le nom de l'enfant peut être ajouté dans le passeport du requérant, si le requérant est une personne visée au sous-alinéa a)(i) ou (ii).

(2) Where the parents of a child are divorced or separated and there is in existence

- (a) a court order made by a court in Canada of competent jurisdiction, or
- (b) a separation agreement,

the terms of which grant the non-custodial parent specific right of access to the child, the child shall not be issued a passport or the child's name shall not be included in the passport of the custodial parent unless the application therefor is accompanied by evidence that the issue of a passport to the child or the inclusion of the child's name in the passport of the custodial parent is not contrary to the terms of the order or separation agreement.

(3) Where there is a court order made by a court in Canada of competent jurisdiction in respect of a child who has not attained sixteen years of age the terms of which restricts the movement of that child to a judicial district specified in the order, the child shall not be issued a passport and the child's name shall not be included in the passport of the applicant unless the court order is revoked or is varied to permit the child to travel outside Canada.

(4) Where an applicant applies for the issue of a passport to a child who has not attained sixteen years of age or to have the name of a child who has not attained sixteen years of age included in the applicant's passport and the applicant fails to provide the Passport Office with

- (a) the information and material required in the application for a passport, or
- (b) the further information and material requested pursuant to section 8,

no passport shall be issued to that child and the name of that child shall not be included in the applicant's passport.

8. (1) In addition to the information and material that an applicant is required to provide in the application for a passport, the Passport Office may request an applicant to provide further information respecting any matter relating to the issue of the passport.

(2) The further information referred to in subsection (1) and the circumstances in which such information may be requested includes the information and circumstances set out in the schedule.

Refusal of Passports and Revocation

9. The Passport Office may refuse to issue a passport to an applicant who

- (a) fails to provide the Passport Office with a duly completed application for a passport or with the information and material that is required or requested
 - (i) in the application for a passport, or
 - (ii) pursuant to section 8;
- (b) stands charged in Canada with the commission of an indictable offence;
- (c) stands charged outside Canada with the commission of any offence that would, if committed in Canada, constitute an indictable offence;

(2) Si les parents d'un enfant sont divorcés ou séparés et qu'il existe

- a) une ordonnance rendue par un tribunal canadien compétent, ou
- b) une entente de séparation

aux termes de laquelle le parent qui n'a pas la garde de l'enfant jouit du droit exprès de visite de l'enfant, aucun passeport n'est délivré à l'enfant et son nom ne peut être ajouté dans le passeport du parent qui a la garde de l'enfant, à moins que la demande ne soit accompagnée d'une preuve établissant que la délivrance d'un passeport à l'enfant ou l'inscription du nom de ce dernier dans le passeport du parent qui a la garde de l'enfant, ne contrevient pas aux dispositions de l'ordonnance ou de l'entente de séparation.

(3) Si une ordonnance a été rendue à l'égard d'un enfant de moins de seize ans par un tribunal canadien compétent ayant pour effet de limiter les déplacements de l'enfant à un district judiciaire précisé dans l'ordonnance, aucun passeport n'est délivré à l'enfant et le nom de ce dernier n'est pas ajouté dans le passeport d'un requérant à moins que l'ordonnance ne soit révoquée ou révisée de façon à permettre à l'enfant de voyager hors du Canada.

(4) Si un requérant présente une demande de passeport à l'égard d'un enfant de moins de seize ans ou une demande d'inscription du nom de l'enfant dans son passeport et que le requérant ne fournit pas au Bureau des passeports

- a) les renseignements et les documents exigés dans la demande de passeport, ou
- b) les renseignements et documents supplémentaires demandés selon l'article 8,

aucun passeport n'est émis au nom de l'enfant et le nom de ce dernier n'est pas ajouté dans le passeport du requérant.

8. (1) En plus des renseignements et des documents que le requérant doit fournir en présentant une demande de passeport, le Bureau des passeports peut demander à ce requérant de fournir des renseignements supplémentaires à l'égard de toute question se rapportant à la délivrance du passeport.

(2) Les renseignements supplémentaires visés au paragraphe (1) et les circonstances qui justifient la demande de tels renseignements comprennent ceux mentionnés à l'annexe.

Refus de délivrance et révocation

9. Le Bureau des passeports peut refuser de délivrer un passeport à un requérant qui

- a) ne lui présente pas une demande de passeport dûment remplie ou ne lui fournit pas les renseignements et les documents exigés ou demandés
 - (i) dans la demande de passeport, ou
 - (ii) selon l'article 8;
- b) est accusé au Canada d'un acte criminel;
- c) est accusé dans un pays étranger d'avoir commis une infraction qui constituerait un acte criminel si elle était commise au Canada;

(d) is serving a term of imprisonment or is forbidden to leave Canada by

- (i) the terms and conditions of any parole or mandatory supervision imposed under or by virtue of the *Parole Act*,
- (ii) the conditions of a probation order made under the *Criminal Code*, or
- (iii) the conditions of the grant of a temporary absence without escort from a prison or penitentiary;

(e) has been convicted of an offence under section 58 of the *Criminal Code*;

(f) is indebted to the Crown for expenses related to repatriation to Canada or for other consular financial assistance provided abroad at his request by the Government of Canada; or

(g) has been issued a passport that has not expired and has not been revoked or whose name is included in such a passport.

10. The Passport Office may revoke the passport of a person on any ground on which it may refuse to issue a passport to that person if he were an applicant and may revoke the passport of a person who

- (a) being outside Canada, stands charged in a foreign country or state with the commission of any offence that would constitute an indictable offence if committed in Canada;
- (b) uses the passport to assist him in committing an indictable offence in Canada or any offence in a foreign country or state that would constitute an indictable offence if committed in Canada;
- (c) permits another person to use the passport;
- (d) has obtained the passport or the inclusion of the name of a child in the passport by means of false or misleading information; or
- (e) has ceased to be a Canadian citizen.

11. When a person has been advised by the Passport Office that a passport in his possession is required to be returned to the Passport Office, he shall forthwith return the passport to the nearest Passport Office.

d) purge une peine d'emprisonnement ou est frappé de l'interdiction de quitter le Canada

- (i) selon les modalités découlant d'une libération conditionnelle ou d'une libération sous surveillance obligatoire imposée en vertu de la *Loi sur la libération conditionnelle de détenus*,
- (ii) selon les dispositions d'une ordonnance de probation établie en vertu du *Code criminel*, ou
- (iii) selon les conditions régissant une absence temporaire sans escorte d'une prison ou d'un pénitencier;

e) a été déclaré coupable d'un acte criminel selon l'article 58 du *Code criminel*;

f) est redevable envers la Couronne par suite des dépenses engagées en vue de son rapatriement au Canada ou d'une autre assistance financière consulaire qu'il a demandée et que le gouvernement du Canada lui a fournie à l'étranger; ou

g) détient un passeport ou dont le nom est inscrit dans un passeport qui n'est pas expiré et n'a pas été révoqué.

10. Le Bureau des passeports peut révoquer le passeport d'une personne pour toute raison qui justifierait le refus de délivrer un passeport à cette personne si elle présentait une demande, et peut révoquer le passeport d'une personne qui

- a) étant en dehors du Canada, est accusée dans un pays ou un État étranger d'avoir commis une infraction qui constituerait un acte criminel si elle était commise au Canada;
- b) utilise le passeport pour commettre un acte criminel au Canada, ou pour commettre, dans un pays ou État étranger, une infraction qui constituerait un acte criminel si elle était commise au Canada;
- c) permet à une autre personne de se servir du passeport;
- d) a obtenu le passeport ou a fait inscrire le nom d'un enfant dans ce passeport au moyen de renseignements faux ou trompeurs; ou
- e) n'est plus citoyen canadien.

11. Toute personne que le Bureau des passeports avise de lui retourner un passeport qu'elle a en sa possession doit retourner immédiatement ce passeport au Bureau des passeports le plus proche.

SCHEDULE

ADDITIONAL INFORMATION

Name

1. Where an applicant applies for a passport in a name that is

- (a) other than the applicant's legal name,
- (b) different from the name set out in
 - (i) the applicant's birth certificate,
 - (ii) certificate of citizenship, or
 - (iii) any other document required in respect of a passport under this Order,

the applicant may be required to submit additional documents or affidavits in clarification thereof.

ANNEXE

RENSEIGNEMENTS SUPPLÉMENTAIRES

Nom

1. Si le requérant utilise dans sa demande de passeport un nom

- a) autre que son nom légal,
- b) différent du nom qui paraît
 - (i) sur son acte de naissance,
 - (ii) sur son certificat de citoyenneté, ou
 - (iii) sur tout autre document exigé en vertu du présent décret,

il peut être requis de fournir des documents supplémentaires ou des affidavits pour clarifier la situation.

Address

2. Where an applicant provides as an address a Canada Post Office Box number or a General Delivery address, the applicant may be required to provide an explanation for such address or to provide a permanent address.

Date of Birth

3. Where the date of birth of an applicant set out in an application for a passport differs from the date of birth in that applicant's birth certificate, further evidence of the date of birth of the applicant may be required.

Sex

4. (1) Where the sex indicated in an application for a passport is not the same as that set out in that applicant's birth certificate, the applicant may be requested to provide an explanation.

(2) Where an application for a passport indicates that a change of sex of the applicant has taken place, the applicant may be requested to submit a certificate from a medical practitioner to substantiate the statement.

Marital Status

5. Where an applicant's marital status as set out in that applicant's application is single and the applicant applies

(a) to have a child included in the applicant's passport, or

(b) for a passport for a child, evidence may be required to establish that the applicant is the responsible parent of the child.

Loss of Citizenship

6. Where the information submitted in an application for a passport indicates that the applicant may have, at any time, ceased to be a Canadian citizen, information may be required from that applicant to establish that the applicant is a Canadian citizen.

Passports for Children

7. Where an applicant referred to in section 7 of this Order applies for the issue of a passport for a child referred to in that section or to have that child's name included in the applicant's passport, the applicant may be required to submit evidence, in the form of affidavits, statutory declarations or otherwise, to substantiate the applicant's eligibility to so apply.

Missing Canadian Passports

8. Where there is in existence a valid Canadian passport in respect of an applicant and that applicant is unable to produce it, the applicant may be required to provide a statement explaining the circumstances in respect of the missing passport together with such affidavits or statutory declarations as are necessary to establish that the passport is missing and the reasons therefor.

Adresse

2. Si le requérant fournit un numéro de case postale ou la poste restante comme adresse postale, il peut être requis de fournir une explication ou donner une adresse permanente.

Date de naissance

3. Si la date de naissance du requérant donnée dans la demande de passeport diffère de celle qui figure dans son acte de naissance, le requérant peut être requis de fournir d'autres preuves de sa date de naissance.

Sexe

4. (1) Si le sexe indiqué dans la demande de passeport ne correspond pas au sexe indiqué sur l'acte de naissance du requérant, ce dernier peut être requis de fournir une explication.

(2) Si la demande de passeport fait état d'un changement de sexe, le requérant peut être requis de fournir un certificat médical à l'appui de cette déclaration.

Situation de famille

5. Le requérant qui se dit célibataire et qui présente une demande en vue

a) d'ajouter le nom d'un enfant dans son passeport, ou

b) d'obtenir un passeport pour un enfant, peut être appelé à prouver qu'il est le parent responsable de l'enfant.

Perte de citoyenneté

6. Si les renseignements fournis à l'appui de la demande de passeport indiquent que le requérant peut, à un moment quelconque, avoir perdu sa citoyenneté canadienne, celui-ci peut être requis de fournir d'autres renseignements établissant sa citoyenneté canadienne.

Passeports pour enfants

7. Si un requérant visé par l'article 7 du présent décret présente une demande de passeport pour un enfant visé par cet article ou en vue d'ajouter le nom de cet enfant dans son passeport, le requérant peut être appelé à fournir une preuve sous forme d'affidavits, de déclarations statutaires ou autres documents officiels, afin d'appuyer l'admissibilité du requérant à présenter une telle demande.

Passeports canadiens manquants

8. Si un passeport canadien valide a été délivré au requérant et que ce dernier ne peut produire ledit passeport, le requérant peut être requis de fournir une déclaration quant aux circonstances entourant la perte du passeport ainsi que les affidavits ou déclarations statutaires nécessaires, de façon à établir la perte du passeport et les raisons de cette perte.

Marriage

9. (1) Where a female applicant married an alien prior to January 1, 1947, additional information may be required to establish whether the applicant is a Canadian citizen.

(2) Where a female applicant who is married and in possession of a valid passport issued to her in her maiden name requests that her married name be added to the passport, the applicant may be required to produce her marriage certificate.

Delivery of Passports

10. (1) Where delivery of a passport is made at a Passport Office to an applicant, the applicant may be required to produce a document establishing the identity of the applicant.

(2) Where delivery of a passport is made at a Passport Office to the agent of an applicant, that agent may be required to produce a letter of consent from the applicant to accept delivery.

Applicants who have been Refused Passports

11. Where an applicant has previously applied for a passport and the issue of a passport to that applicant has been refused, information may be required from the applicant to establish that the applicant is eligible to be issued a passport.

Proof of Guardianship

12. Where the application for a passport is in respect of a child and the applicant is the legal guardian of the child, information may be required to establish proof of guardianship of that child.

EXPLANATORY NOTE

(This note is not part of the Order, but is intended only for information purposes.)

This order authorizes the issuance of Canadian passports.

Mariage

9. (1) Si la requérante a épousé un étranger avant le 1^{er} janvier 1947, il peut lui être nécessaire de fournir des renseignements supplémentaires afin de confirmer qu'elle est citoyenne canadienne.

(2) Si la requérante mariée est en possession d'un passeport valide émis à son nom de jeune fille et demande que son nom de femme mariée soit ajouté au passeport, elle peut être requise de produire son certificat de mariage.

Délivrance des passeports

10. (1) Lorsque le requérant prend possession d'un passeport dans un Bureau des passeports, il peut être appelé à produire un document établissant son identité.

(2) Si un représentant du requérant prend possession d'un passeport dans un Bureau des passeports, il peut être appelé à produire une lettre de consentement du requérant l'autorisant à prendre livraison du passeport.

Requérants auxquels on a refusé un passeport

11. Si le requérant a déjà présenté une demande de passeport et que celle-ci lui a été refusée, il peut être appelé à fournir des renseignements en vue d'établir son admissibilité à un passeport.

Preuve de la garde d'un enfant

12. Si le tuteur d'un enfant présente une demande de passeport à l'égard de l'enfant, il peut être requis de fournir des renseignements établissant la garde de cet enfant.

NOTE EXPLICATIVE

(La présente note ne fait pas partie du décret et n'est publiée qu'à titre d'information.)

Ce décret autorise la délivrance de passeports canadiens.

ANNEXE "G"

RAPPORT D'ACTIVITÉS
SUR LES RECOMMANDATIONS FORMULÉES À
L'INTENTION DES GOUVERNEMENTS
FÉDÉRAL ET PROVINCIAUX

COLOMBIE-BRITANNIQUE

Recommandations touchant des activités provinciales:

Pour plus de concision, la Family Relations Act, R.S.B.C. 1979, c. 121, est ci-après appelée la "F.R.A."

1. Mise en oeuvre d'un système informatisé de contrôle du paiement des pensions alimentaires.

La mise sur pied d'un système informatisé de contrôle du paiement des pensions alimentaires est sérieusement envisagée.

2. Adoption de dispositions législatives exigeant la divulgation d'informations servant à repérer un défendeur éventuel à une demande de pension alimentaire ou de garde d'enfant ou une personne qui ne respecte pas une ordonnance en vigueur portant sur le versement d'une pension alimentaire.

On ne se propose pas à l'heure actuelle de déposer un projet de loi exigeant des organismes provinciaux et des particuliers assujettis aux lois provinciales qu'ils divulguent cette information.

3. Mise sur pied d'une banque informatisée de données.

La mise sur pied d'une banque informatisée de données n'est pas envisagée.

4. Elaboration d'une procédure d'exécution automatique des ordonnances de pension alimentaire qui soit à l'initiative de l'Etat.

La possibilité de mettre sur pied un programme d'exécution automatique à l'initiative de l'Etat est sérieusement envisagée.

5. Accent mis sur les procédures d'exécution ne nécessitant pas la tenue d'auditions par le tribunal.

On ne met pas d'accent particulier sur les procédures d'exécution ne nécessitant pas la tenue d'auditions par le tribunal. Les procédures applicables sont variées. C'est à celui qui demande l'exécution qu'il appartient de choisir la procédure à suivre. Suivant les décisions qui pourraient être prises en ce qui a trait aux numéros 1 et 4 ci-dessus, cette situation pourrait changer.

6. Adoption de dispositions législatives visant à abolir le principe selon lequel on ne peut réclamer plus d'un an d'arriéré de pension alimentaire.

Voir le paragraphe 65(2) de la F.R.A. sur le pouvoir discrétionnaire qu'a le tribunal de délivrer des brefs d'exécution dont la validité dépasse un an. Dans tous les autres cas, c'est la jurisprudence qui a établi le délai d'un an. A l'heure actuelle, on n'envisage pas de légiférer pour modifier ce délai.

7. Adoption de dispositions législatives qui permettraient d'assurer le paiement des pensions alimentaires stipulées dans les ententes de séparation.

Les ententes écrites ont force exécutoire lorsque les parties consentent à les déposer devant le tribunal. Voir l'article 74 de la F.R.A. A l'heure actuelle, on n'envisage pas de modifier la loi de manière à y incorporer les cas d'absence de consentement à ce dépôt.

8. Adoption de dispositions législatives prévoyant des recours particuliers pour assurer le paiement des pensions alimentaires.

La C.-B dispose des recours recommandés, exception faite de ceux prévus aux alinéas (d), (g), (h) et (i), sauf l'aliénation des biens familiaux. Voir l'article 17 de la F.R.A.

9. Adoption du projet de loi uniforme sur l'exécution réciproque des obligations alimentaires.

On n'envisage pas, à l'heure actuelle, d'adopter les dispositions de la loi uniforme sur l'exécution réciproque des obligations alimentaires.

10. Adoption d'une loi uniforme prévoyant des ordonnances interdisant à l'un des conjoints de molester, d'importuner ou de harceler l'autre conjoint ou un enfant confié à la garde de celui-ci.

La C.-B. a déjà légiféré dans ce domaine: articles 37, 79 et 81 de la F.R.A.

11. Adoption de dispositions législatives autorisant la cession des pensions alimentaires au gouvernement provincial, lorsque le bénéficiaire reçoit des prestations d'aide sociale.

La C.-B. a déjà légiféré dans ce domaine: paragraphe 61(5) de la F.R.A. (et les modifications qui lui ont été apportées le 7 juin 1982).

12. Extension du mandat confié aux avocats de la Couronne provinciale, en matière d'exécution, afin d'y inclure l'exécution des ordonnances de garde d'enfant rendues à l'extérieur de la province.

On se propose d'inclure dans le mandat confié aux avocats les questions de garde d'enfant fondées sur la Convention internationale de La Haye mais non celles qui sont fondées sur l'exécution des ordonnances de garde d'enfant rendues dans d'autres provinces. La planification à ce sujet n'est pas encore entièrement terminée.

13. Adoption de dispositions législatives prévoyant des recours précis pour assurer l'exécution des ordonnances de garde d'enfant.

La C.-B. a déjà légiféré dans ce domaine.

(A) Recours ayant pour objet d'aider à recouvrer l'enfant:

- (i) Constitution de sûretés ou de cautionnements pour l'exécution d'une ordonnance de \$5,000. Family Relations Act Rules, règle 15(1).
- (ii) Mandat d'arrêt - dans le cas où le parent qui a enlevé son enfant risque d'échapper à la compétence judiciaire dont il relève.

Voir les articles 37 et 81 de la F.R.A.
Noter les modifications récentes apportées au Code criminel, articles 249 et 250.
- (iii) Ordonnance enjoignant aux agents de la paix de retrouver et d'aider à retourner l'enfant qui a été enlevé.

En ce qui concerne l'arrestation et le fait de retourner l'enfant (mais non de le retrouver), voir l'article 36 de la F.R.A. A l'heure actuelle, aucune disposition ne traite de la question de retrouver l'enfant.

- (iv) Dépôt de documents de voyage, tel le passeport. Ce pouvoir est prévu. Voir l'alinéa 37 (c) (iii) de la F.R.A.

B. Sanctions pénales

- (i) Emprisonnement pour outrage au tribunal - Ce pouvoir est prévu. Voir le paragraphe 2(3) de la Provincial Court Act;
- (ii) Amende - Quiconque transgresse une ordonnance de garde ou entrave l'exercice d'un droit de visite commet une infraction. Voir le paragraphe 81(2) de la F.R.A. Une infraction est punissable d'une peine d'emprisonnement d'au plus 6 mois ou d'une amende d'au plus \$2,000. ou de l'une et l'autre de ces peines. Voir l'article 4 de la Offence Act.
14. Adoption du projet de loi uniforme sur l'exécution des ordonnances de garde d'enfant, afin de mettre en oeuvre la Convention internationale de La Haye sur les aspects civils du rapt d'enfant et d'étendre les principes énoncés dans cette convention à l'exécution des ordonnances de garde d'enfant à l'intérieur d'une province et entre les provinces.

Une loi habilitante a été adoptée mais elle n'est pas encore proclamée. A l'heure actuelle, on ne se propose pas d'en étendre les principes.

15. Nomination de spécialistes en droit de la famille à la magistrature provinciale.

Aucun projet de cette nature n'a été annoncé.

Le 2 mars 1983.

ALBERTA

Recommandations touchant des activités provinciales:

1. Mise en oeuvre d'un système informatisé de contrôle du paiement des pensions alimentaires.

L'Alberta ne dispose pas d'un tel système. Cette question fait l'objet de pourparlers entre le ministère du Procureur général (Department of the Attorney General) et le ministère des Services sociaux et de la santé communautaire (Department of Social Services and Community Health).

2. Adoption d'une disposition législative exigeant que tout organisme public ou particulier divulgue, sur ordre du tribunal, l'adresse, le lieu de travail, ou d'autres renseignements permettant de retracer un défendeur éventuel ou encore, un débiteur alimentaire défaillant.

Une loi relative à cette recommandation n'est pas envisagée pour bientôt. La question exigera d'autres pourparlers entre les divers ministères et organismes concernés.

3. Maintien d'une banque informatisée de données.

L'Alberta ne dispose pas d'un tel système.

4. Procédure d'exécution automatique, à l'initiative de l'État, des ordonnances de pension alimentaire.

En Alberta, le ministère des Services sociaux et de la santé communautaire (Department of Social Services and Community Health) procède, à son initiative, à l'exécution des pensions alimentaires dans les cas où il devient subrogé aux droits du débiteur alimentaire, par suite du versement de prestations d'aide sociale. Le ministère des Services sociaux a ses propres dossiers à ce sujet et prend ces mesures en se fondant sur ceux-ci.

5. Importance accrue accordée aux procédures d'exécution ne nécessitant pas la tenue d'auditions par le tribunal.

Le ministère des Services sociaux peut adopter des procédures assouplies pour favoriser la perception de pensions alimentaires lorsqu'elles font l'objet d'une subrogation. En Alberta, le système d'exécution judiciaire est employé si les autres procédures d'exécution s'avèrent insatisfaisantes.

6. Adoption d'une disposition législative abolissant le principe selon lequel on ne peut réclamer plus d'un an d'arrière de pension alimentaire.

Aucun problème n'a été relevé dans la jurisprudence de l'Alberta à propos de la prétendue règle relative aux arrérages accumulés depuis plus d'un an. On n'entend par conséquent, présenter aucune loi à ce sujet.

7. Adoption d'une disposition législative permettant d'assurer le paiement des pensions alimentaires stipulées dans les accords de séparation.

La question visant à accorder plus d'importance à l'exécution de la pension alimentaire fait l'objet de consultations avec le ministère des Services sociaux. Ce genre de question fera partie, sans nul doute, de la révision permanente de nos lois en matière de droit de la famille.

8. Adoption d'une disposition législative prévoyant des recours particuliers pour assurer le paiement des pensions alimentaires.

Les recours suivants sont applicables, aux termes de notre "Domestic Relations Act":

- 1) Tous les recours prévus à la Partie XXIV du Code criminel (Canada) visant l'exécution d'une ordonnance prononcée par un juge, laquelle prévoit le versement d'une amende ou une peine.
- 2) Ordonnance de paiement des arrérages.
- 3) Saisie du traitement, salaire ou autre rémunération.
- 4) Ordonnance autorisant le demandeur à faire le dépôt de l'ordonnance, au bureau du shérif, à titre de bref d'exécution au montant de la créance échue.

A cet égard, et nonobstant toute autre loi, une ordonnance de pension alimentaire ainsi déposée, emporte priorité sur tous les autres brefs d'exécution, pour un montant équivalent au total de la créance alimentaire échue au cours des trois derniers mois, conformément à l'ordonnance.

- 5) Saisie de toute créance, de tout droit et de tout actif autre que le salaire et le traitement, qu'un débiteur nommé doit. Celle-ci devient payable au greffier de la Cour provinciale. Cette procédure s'effectue ex parte.
- 6) Enregistrement d'une ordonnance au bureau des titres de biens-fonds. Cette mesure a pour effet de grever les biens-fonds du débiteur alimentaire.
9. Adoption de la version modifiée du projet de loi uniforme sur l'exécution réciproque des obligations alimentaires qui a été adoptée par la Conférence sur l'uniformisation des lois au Canada.

La loi a été adoptée en 1980 au Nouveau-Brunswick sans la modification proposée. Nous prenons bonne note de la modification proposée à l'article 7(7)(c). Nous prenons les dispositions nécessaires pour signaler cette question à notre conseiller législatif.

10. Adoption d'une disposition législative uniforme prévoyant des ordonnances interdisant à l'un des conjoints de molester, d'importuner ou de harceler l'autre conjoint ou un enfant confié à la garde de celui-ci.

En Alberta, les dispositions de la Partie XXIV du Code criminel s'appliquent, aux termes de notre Domestic Relations Act. La question relative à l'adoption d'une loi uniforme fera l'objet d'une étude ultérieure.

11. Adoption d'une loi autorisant la cession des pensions alimentaires au gouvernement provincial, lorsque le bénéficiaire reçoit des prestations d'aide sociale.

En Alberta, cette mesure est autorisée aux termes de la Social Development Act. Une cession écrite n'est pas nécessaire et la Couronne a le pouvoir d'en faire une demande de cession, avec ou sans le consentement du prestataire d'aide sociale.

12. Extension du mandat confié aux avocats de la Couronne provinciale, en matière d'exécution, afin d'y inclure l'exécution des ordonnances de garde d'enfant rendues à l'extérieur de la province.

Le ministère du Procureur général a proposé qu'un avocat soit nommé pour conseiller et aider les parties à obtenir les services d'un avocat de pratique privée, dans le but d'intenter des recours civils d'ordre privé devant le tribunal. Cette question fait l'objet de

consultations avec le ministère des Services sociaux et de la santé communautaire. Nous ne proposons toutefois pas que l'avocat de la Couronne défende les intérêts d'un particulier en ce qui a trait aux mesures d'exécution en matière de garde d'enfant. Cette question est à l'étude et sera présentée au cours des entretiens continus que nous tenons avec le ministère des Services sociaux et de la santé communautaire au sujet de la Convention internationale de La Haye ainsi que des obligations que nous avons à cet égard.

13. Adoption de dispositions législatives prévoyant des recours précis pour assurer l'exécution des ordonnances de garde d'enfant.

Cette question fait présentement l'objet d'une étude.

14. Adoption du projet de loi uniforme sur l'exécution des ordonnances de garde d'enfant, afin de mettre en oeuvre la convention internationale de La Haye sur les aspects civils du rapt d'enfant et d'étendre les principes énoncés dans cette convention à l'exécution des ordonnances de garde d'enfant à l'intérieur d'une province et entre les provinces.

Cette question fait présentement l'objet d'une étude.

15. Nomination de spécialistes en droit de la famille à la magistrature provinciale.

Les questions touchant au Tribunal de la famille à compétence intégrale et à ce qui s'y rattache ainsi qu'au rôle que joue la province relativement à la nomination de spécialistes sont des questions dont il a sérieusement été tenu compte; l'Alberta attend les résultats de l'évaluation des projets expérimentaux de Tribunaux de la famille à compétence intégrale qui existent présentement dans le pays, avant d'examiner cette question plus en détail.

Mars 1983

SASKATCHEWAN

Recommandations touchant des activités provinciales:

1. Nous étudions actuellement la possibilité d'instaurer un système de contrôle informatisé ainsi que d'un système d'exécution sur initiative de l'Etat.
2. Nous n'envisageons pas pour l'instant de loi imposant la révélation de renseignements par des organismes provinciaux; il nous faut attendre la publication d'un rapport provincial sur les besoins en matière de législation sur la liberté de l'information.
3. Nous n'envisageons pas, pour l'instant, la mise sur pied d'une banque de données.
4. Nous étudions l'institution d'un système d'exécution automatique à l'initiative de l'Etat.
5. Notre procédure d'exécution dépend actuellement beaucoup d'étapes non judiciaires comme l'examen préalable à l'exécution et la saisie-arrêt; nous ne prévoyons pas de réforme à ce système.
6. Nous ne prévoyons pas de réforme législative abolissant la règle de la prescription d'un an.
7. L'exécution par voie législative d'accords de séparation n'est pas prévue pour l'instant.
8. La Saskatchewan est dotée des recours qui figurent dans la recommandation no. 8, sauf le recours g).
9. La Saskatchewan a l'intention de présenter un projet de loi à la session du printemps, afin de faire voter la loi uniformisée sur l'exécution réciproque des ordonnances de soutien.
10. La Saskatchewan projette une réforme du droit de la famille et du droit de la garde des enfants au cours de l'année prochaine ou de l'année suivante, et la possibilité d'adopter une disposition s'opposant aux mauvais traitements en matière de garde sera étudiée. Certes, une telle ordonnance peut déjà être décrétée par les juges dans le cadre de leurs pouvoirs généraux en matière de garde d'enfant.
11. Aux termes du Deserted Wives' and Children's Maintenance Act de la Saskatchewan, le ministère des Affaires sociales peut maintenant chercher à obtenir

une pension pour le conjoint et les enfants. Cependant, cette disposition n'est pas utilisée pour l'instant et elle est d'une portée limitée. Cependant, on envisage un mandat plus vaste, mais toute décision sur ce point est liée à une décision favorable en matière d'exécution sur initiative de l'Etat.

12. La Saskatchewan n'a pas, pour l'instant, l'intention d'étendre le rôle de l'avocat de la couronne afin de lui confier le soin de représenter, dans les questions d'ordonnances de garde, les parties provenant d'autres provinces, sauf dans les limites du rôle que la Couronne de la province peut décider d'assumer dans le cadre de la Convention de La Haye.
13. Toute loi spéciale en matière de nouveaux recours pour l'exécution des ordonnances de garde ne sera décrétée que dans le cadre d'une révision d'ensemble du droit de la famille.
14. On s'attend à ce que la loi intégrant la Convention de La Haye en Saskatchewan soit présentée à la session parlementaire du printemps.
15. Comme le droit de la famille relève généralement de la Cour supérieure de la province et comme il est envisagé actuellement d'étendre le rôle des tribunaux de la famille à juridiction intégrale à toute la province, ces tribunaux étant des tribunaux supérieurs, nous n'envisageons pas de participation de la Cour provinciale dans ce domaine. Cependant, si le mandat des tribunaux de la famille n'est pas étendu, il est possible que la Cour provinciale reçoive alors un nouveau mandat relativement à ces questions.

Janvier 1983

MANITOBA

Recommandations touchant des activités provinciales:

1. Mise en oeuvre d'un système informatisé de contrôle du paiement des pensions alimentaires.

Le Manitoba a institué ce système en 1980.

2. Adoption de mesures législatives imposant aux organismes publics et aux particuliers de révéler l'adresse, le lieu d'emploi ou tout renseignement de nature à aider à trouver un intime éventuel ou un débiteur en défaut:

Aux termes de l'article 31.1(7) de la Loi sur l'obligation alimentaire du Manitoba, il est prévu que la communication de renseignements de ce genre puisse être imposée.

(TRADUCTION)

"Dans le cadre de mesures d'enquête prises en application de la clause (6)(a), le fonctionnaire désigné peut demander à toute personne, au gouvernement ou à tout organisme public de lui révéler tous renseignements, sur l'adresse du débiteur en défaut, qu'ils pourraient posséder ou sur lesquels ils pourraient avoir un contrôle, et il est impératif que la personne, le gouvernement ou l'organisme public les révèlent alors au fonctionnaire désigné, malgré toute disposition contraire d'une autre loi de la législature."

3. Mise au point d'une banque de données, conjointement à l'application des recommandations 1 et 2.

Le Manitoba n'est pas doté d'un tel système.

4. Système de recouvrement des pensions alimentaires sur initiative de l'Etat

Le ministère du Procureur général de la Province du Manitoba offre ce service pour l'exécution de toutes les ordonnances.

5. Importance de plus en plus grande accordée aux procédures d'exécution ne faisant pas intervenir les tribunaux:

Le Manitoba possède un système de ce type, grâce auquel les fonctionnaires désignés attachés au tribunal ont été chargés de prendre toutes les mesures possibles en vue de l'exécution d'une ordonnance hors cour, notamment la délivrance d'une ordonnance de saisie-arrêt ou d'un bref d'exécution. Ce n'est que si la saisie-arrêt n'est pas possible ou ne suffit pas que la question sera soumise au tribunal pour exécution. L'article 31.1(10) de la Loi sur l'obligation alimentaire identifie les recours et procédures hors cour qui sont offerts:

"Dans le cadre des mesures prises en vertu du paragraphe (5), mais sans restreindre la portée générale de ce texte et même en l'absence d'avis conformément à la clause (6)(b), que la personne en défaut comparaisse ou non en vertu du paragraphe (9), le fonctionnaire désigné a le choix de prendre l'une ou l'autre des mesures suivantes:

- a) Procédures visant la réalisation d'un cautionnement versé ou d'une garantie déposée en vertu de l'article 25;
- b) Procédures en vue de l'imposition des peines prévues à l'article 26;
- c) L'inscription de l'ordonnance au bureau d'enregistrement des titres fonciers, conformément à l'article 27, et l'institution de procédures en vertu de la Loi sur les jugements, pour pratiquer l'inscription;
- d) L'émission d'une ordonnance de saisie-arrêt;
- e) L'émission d'un bref d'exécution;
- f) La nomination d'un séquestre, en vertu de l'article 31."

6. Adoption de dispositions législatives abolissant la règle de la prescription d'un an.

La Loi sur l'obligation alimentaire du Manitoba contient une disposition à cet effet.

7. Adoption de dispositions législatives permettant d'assurer le paiement des pensions alimentaires stipulées dans les accords de séparation.

Le Manitoba n'est pas doté de lois dans ce sens.

8. Adoption de dispositions législatives prévoyant des recours précis pour assurer le paiement des pensions alimentaires.

- a) Ordonnance de saisie-arrêt continue prévue en vertu de la Loi sur la saisie-arrêt et de la Loi sur l'obligation alimentaire.
- b) Le bref d'exécution est prévu en vertu de la Loi sur l'obligation alimentaire.
- c) et d) La Loi sur l'obligation alimentaire prévoit, en cas de défaut, une peine de 30 jours d'emprisonnement et/ou une amende n'exédant pas 500\$.
- e) Le dépôt d'une garantie ou d'un cautionnement est prévu par la Loi sur l'obligation alimentaire.
- f) L'inscription d'une hypothèque immobilière est prévue par la Loi sur l'obligation alimentaire.
- g) La nomination d'un séquestre est possible, aux termes de la Loi sur l'obligation alimentaire.
- h) Un mandat d'arrêt ne peut être émis, même s'il y a risque de vente des biens ou de fuite du débiteur hors du ressort du tribunal.
- i) Au Manitoba, il n'est pas possible d'obtenir une ordonnance ex parte visant à restreindre l'aliénation de biens.

9. Adoption du projet de loi uniforme sur l'exécution réciproque des ordonnances alimentaires, d'après les résolutions de la Conférence sur l'uniformisation des lois au Canada, modifiées par le Comité fédéral-provincial sur l'exécution.

Le Manitoba a adopté cette loi avec la modification prévue de l'article 7(7)(c). Ladite loi n'a pas encore été proclamée. Cette loi devrait être proclamée dans les prochains mois.

10. Adoption du projet de loi uniforme prévoyant des ordonnances interdisant à l'un des conjoints de molester, d'importuner ou de harceler l'autre conjoint ou un enfant confié à la garde de celui-ci.

L'article 8(1)(d) de la Loi sur l'obligation alimentaire du Manitoba contient une disposition à cet effet.

11. Adoption de dispositions législatives autorisant la cession des pensions alimentaires au gouvernement provincial, lorsque le bénéficiaire reçoit des prestations d'aide sociale.

La Loi sur l'obligation alimentaire du Manitoba et la Loi sur le secours social du Manitoba contiennent des dispositions à cet effet.

12. Extension du mandat confié aux avocats de la Couronne provinciale, en matière d'exécution, afin d'y inclure l'exécution des ordonnances étrangères de garde d'enfant.

Le Manitoba offre les services d'avocats de la Couronne afin d'exécuter les ordonnances étrangères de garde, conformément à la Loi sur l'exécution des ordonnances de garde et à la Loi sur le divorce.

13. Adoption de dispositions législatives prévoyant des recours précis pour assurer l'exécution des ordonnances de garde.

Le Manitoba a adopté la Loi sur l'exécution de la garde d'enfant, qui prévoit des recours spéciaux à cet effet.

14. Adoption du projet de loi uniforme sur l'exécution des ordonnances de garde d'enfant, afin de mettre en oeuvre la Convention de La Haye sur les aspects civils du rapt d'enfant au niveau international et d'étendre les principes de cette convention à l'exécution des ordonnances de garde d'enfant à l'intérieur d'une province et entre les provinces.

En 1982, le Manitoba a adopté et proclamé la Loi sur l'exécution de la garde d'enfant qui est fondée sur la Loi uniforme d'exécution de la garde d'enfant. Cette nouvelle loi met en oeuvre les accords de la Convention de La Haye et étend ses principes à l'exécution des ordonnances de garde d'enfant aux échelles inter et intraprovinciales.

15. Nomination de spécialistes en droit de la famille à la magistrature provinciale.

Le Manitoba souhaite actuellement établir un système de tribunaux de la famille à juridiction intégrale au niveau de la province.

Janvier 1983.

ONTARIO

Recommandations touchant des activités provinciales:

1. L'Ontario tient un système informatisé d'enregistrement pour le total des versements de pensions alimentaires faits à l'ensemble des familles d'après tous les dossiers gardés tribunal. Les données sont compilées tous les mois. Les versements effectués sur chaque dossier judiciaire individuel font l'objet d'un contrôle manuel au niveau du tribunal de la famille.
2. Loi portant réforme du droit de la famille, article 26; Children's Law Reform Amendment Act, 1982, article 40.
3. La mise au point d'une banque informatisée de données n'est pas envisagée pour le moment.
4. Il existe des mécanismes d'exécution sur initiative de l'Etat. L'affectation de personnel à l'exécution sur initiative de l'Etat dépend de décisions sur la répartition des ressources au niveau du tribunal de la famille.
- 5.
6. La "règle d'un an" ne pose pas de problème aux tribunaux ontariens et, par conséquent, il n'est pas prévu de voter de loi en ce sens.
7. Il n'y a pas encore, en Ontario, de législation portant sur l'exécution judiciaire des accords de séparation; toutefois, cette question pourrait être envisagée dans le contexte d'une réforme de la Loi portant réforme du droit de la famille de l'Ontario, laquelle réforme est lancée actuellement.
8. Loi portant réforme du droit de la famille et les Règles de la Cour provinciale (Division de la famille).
9. La Reciprocal Enforcement of Maintenance Orders Act, 1982, article 7(7).
10. Loi portant réforme du droit de la famille, article 34.
11. Loi portant réforme du droit de la famille, article 19(4).
12. Le gouvernement de l'Ontario ne fournit pas, pour l'instant, les services d'un avocat pour l'exécution des ordonnances étrangères de garde.
13. La Children's Law Reform Amendment Act, 1982, et la Provincial Courts Act.

14. La Children's Law Reform Amendment Act, 1982.
15. Il sera tenu compte, dans la nomination des juges à la Cour provinciale (Division de la famille), de leur compétence en droit de la famille.

Janvier 1983

QUÉBEC

Recommandations touchant des activités provinciales:

1. Mise en oeuvre d'un système informatisé de contrôle du paiement des pensions alimentaires

Le Québec est doté d'un tel système.

2. Adoption de dispositions législatives imposant la divulgation de renseignements de nature à aider dans la recherche d'un intime éventuel ou d'un débiteur en défaut

Le Québec a opéré une modification du Code de procédure civile, où l'article 564.1 prévoit maintenant que:

- "1. Lorsqu'un jugement accordant une pension alimentaire est devenu exécutoire, un juge peut, sur requête du créancier de la pension et si les circonstances le justifient, ordonner à une personne de fournir à ce créancier les informations dont elle dispose sur la résidence et le lieu de travail du débiteur en défaut et permettre au besoin qu'elle soit interrogée devant le protonotaire à cette fin.

Le présent article s'applique malgré toute disposition incompatible d'une loi générale ou spéciale prévoyant la confidentialité ou la non-divulgation de certains renseignements ou documents. Il ne s'applique pas cependant à une personne qui a reçu ces informations dans l'exercice de sa profession et qui est liée envers le débiteur par le secret professionnel."

Il n'existe cependant aucune disposition visant à l'exécution des ordonnances de soutien.

3. Mise au point d'une banque informatisée de données

Le Québec n'est pas doté d'une banque de ce type.

4. Système administratif de recouvrement des pensions alimentaires sur initiative de l'Etat

La Loi pour favoriser la perception des pensions alimentaires (L.Q., 1980, c. 21) dispose que l'Etat peut recouvrer les créances, mais ce n'est pas un

mécanisme laissé totalement à l'initiative de l'Etat. En réalité, les percepteurs de pensions alimentaires ne prennent des mesures que si les conjoints créanciers en font la demande.

5. Accent mis sur les procédures d'exécution ne nécessitant pas la tenue d'auditions par le tribunal.

Lorsque la saisie-arrêt d'un salaire a lieu pour l'exécution d'un jugement qui accorde une pension alimentaire ou si une réclamation au même effet est produite au dossier d'une saisie-arrêt, cette saisie demeure tenante jusqu'à ce que mainlevée en soit donnée (Art. 641.1, Code de procédure civile).

La mainlevée ne peut cependant être donnée que lorsque les arrérages ont été payés. A ce moment-là, le débiteur peut demander au protonotaire de suspendre la saisie-arrêt et lui offrir de lui payer directement les versements de la pension alimentaire (art. 659.5 C.P.C.). Si le protonotaire estime que les garanties fournies par le débiteur sont suffisantes, il accède à sa demande et il en avise le tiers-saisi qui cesse alors ses dépôts au bureau du protonotaire (art. 659.6 C.P.C.). Sur défaut du débiteur d'effectuer un paiement à échéance, la saisie redevient exécutoire et le protonotaire en avise le tiers-saisi qui, dans les 10 jours suivant la réception de cet avis doit déposer les sommes en souffrance (art. 659.8 C.P.C.).

6. Adoption de dispositions législatives abolissant la règle de la prescription d'un an

La règle d'un an ne s'applique pas au Québec. L'article 2260 b) du Code civil du Bas-Canada dispose que "les arrérages d'une pension alimentaire accordée par jugement se prescrivent par trois ans".

7. Adoption de dispositions législatives qui permettraient d'assurer le paiement des pensions alimentaires stipulées dans les accords de séparation

Il n'est pas prévu actuellement de promulguer une loi en ce sens. D'après les articles 822 à 822.5 du Code de procédure civile, les parties doivent présenter un projet d'accord de séparation à la Cour pour approbation. La Cour entérine cet accord de séparation lorsqu'elle accorde la séparation de corps ou le divorce à la suite d'une demande conjointe accompagnée du projet d'accord.

8. Adoption de dispositions législatives prévoyant des recours particuliers pour assurer le paiement des pensions alimentaires

- a) Ordonnance de saisie-arrêt continue - Le droit civil québécois prévoit cette possibilité, à l'article 641.1 du Code de procédure civile.
- b) Saisie-exécution mobilière - Elle est prévue à l'article 659.1 du Code de procédure civile.
- c) Emprisonnement et amende - Le Québec n'a pas prévu ces recours.
- d)
- e) Dépôt d'une caution ou d'une garantie - Il est prévu à l'article 639 du nouveau Code civil du Québec.
- f) Enregistrement d'une ordonnance contre un bien mobilier - à l'article 2036 du Code civil du Bas-Canada; le percepteur de pensions alimentaires peut faire saisir tout immeuble du débiteur (article 661.1 du Code de procédure civile).
- g) à i) Nomination d'un séquestre, mandat d'arrêt ou ordonnance ex parte restreignant l'aliénation des biens - Le Québec n'a pas prévu ces recours.

9. Adoption du projet de loi uniforme sur l'exécution réciproque des ordonnances alimentaires

La recommandation est à l'étude. Le Québec a modifié la Loi sur l'exécution réciproque des ordonnances alimentaires afin de la rendre applicable à des États garantissant la réciprocité, en dehors du Canada. Cependant, la province n'a pas adopté la loi uniforme, ni la modification proposée à l'article 7(7).

10. Adoption d'une loi uniforme prévoyant des ordonnances interdisant à l'un des conjoints de molester, d'importuner ou de harceler l'autre conjoint ou un enfant confié à la garde de celui-ci.

Cette recommandation est à l'étude.

11. Adoption de dispositions législatives autorisant la cession des pensions alimentaires au gouvernement provincial, lorsque le bénéficiaire reçoit des prestations d'aide sociale

Le Québec prévoit cette possibilité aux articles 13 à 13.2 de la Loi sur l'aide sociale (L.R.Q., c. A-16).

- 12 à 14 (Recommandations sur l'exécution des ordonnances de garde)

Ces recommandations sont à l'étude. On prévoit que la Loi sur l'enlèvement d'enfant sera votée en 1983. Cependant, dans notre système civiliste, il conviendrait mieux d'adopter la méthode prévue dans la Convention de La Haye au lieu de s'inspirer de la Loi uniforme sur la compétence judiciaire et l'exécution des jugements en matière de garde des enfants adoptée en 1981 par la Conférence sur l'uniformisation des lois au Canada.

15. Nomination de spécialistes du droit de la famille à la magistrature provinciale

Cette recommandation fera l'objet d'une étude ultérieure, quand le Québec sera doté d'un tribunal provincial de la famille.

Le 21 janvier 1983

NOUVEAU-BRUNSWICK

Recommandations touchant des activités provinciales:

1. Mise en oeuvre d'un système informatisé de contrôle du paiement des pensions alimentaires.

Le Nouveau-Brunswick n'est pas doté d'un tel système.

2. Adoption de dispositions législatives imposant aux organismes provinciaux et aux particuliers de révéler l'adresse, le lieu de travail et tout renseignement qu'ils possèdent pour aider à retrouver un intime éventuel ou un débiteur en défaut.

Au Nouveau-Brunswick, la Loi sur les services à l'enfant et à la famille et sur les relations familiales dispose, dans son article 122:

"122(1) Lorsqu'elle estime que,

- a) pour introduire une demande en application de la présente Partie; ou
- b) pour que soit exécutée une ordonnance de soutien, de garde ou attributive de droit de visite,

le demandeur éventuel ou le bénéficiaire de l'ordonnance a besoin de savoir ou de vérifier où se trouve le défendeur éventuel ou la personne contre qui l'ordonnance est rendue, la Cour peut ordonner à toute personne ou tout organisme public de lui fournir l'adresse qui figure aux dossiers confiés à sa garde et cette personne ou cet organisme doit lui fournir toutes les indications possibles."

3. Mise sur pied d'une banque informatisée de données

Le Nouveau-Brunswick n'est pas doté d'un tel système.

4. Système administratif de recouvrement des pensions alimentaires sur l'initiative de l'Etat

Cette méthode d'exécution existe au Nouveau-Brunswick dans tous les Tribunaux de la famille, sauf si le bénéficiaire décide de ne pas s'en prévaloir.

5. Accent mis sur les procédures d'exécution ne nécessitant pas la tenue d'auditions par le tribunal

Le Nouveau-Brunswick dispose des services d'agents de recouvrement dans chaque bureau des Tribunaux de la famille. Ceux-ci travaillent avec un registre manuel et ils ne sont dotés d'aucun pouvoir d'exécution. En cas de défaut ou d'échec à la suite d'une conversation officieuse avec l'intimé dans l'espoir de recouvrer les sommes en souffrance, l'agent de recouvrement doit alors faire une déclaration sous serment indiquant le retard de paiement; cela marque le début de la procédure de justification. Le greffier de la Cour délivre une citation à comparaître à l'intimé.

L'article 123(6) de la Loi sur les services à l'enfant et à la famille et sur les relations familiales autorise le greffier à régler les questions de défaut de la façon suivante:

"123(6) Un juge de la Cour peut nommer un greffier, un conseiller-maître ou tout autre fonctionnaire de la Cour pour étudier et disposer des demandes faites en application du présent article, auxquels cas l'ordonnance rendue par le greffier, le conseiller-maître ou l'autre fonctionnaire relativement à une demande est l'ordonnance de la Cour; cependant, lorsqu'un greffier, un conseiller-maître ou un autre fonctionnaire est d'avis que la compétence de la Cour sur les matières visées à l'alinéa 3(c) devrait être exercée, il doit ajourner l'audition et déférer l'affaire à un juge." 1982, c. 13, s. 5.

Jusqu'à présent, cette délégation de pouvoirs a été exercée par un seul tribunal, dans l'exécution des ordonnances alimentaires prises en vertu de la législation provinciale en matière de soutien, et non en vertu de la Loi sur le divorce.

6. Adoption de dispositions législatives abolissant la règle de la prescription d'un an

Les règles du Nouveau-Brunswick sur le divorce renferment une disposition rendant obligatoire la demande d'exécution des arriérés de pension alimentaire échus depuis plus d'un an. La Loi sur les services à l'enfant et à la famille et sur les relations familiales de la province n'impose pas d'autorisation, mais la règle d'un an de la common law est généralement suivie.

7. Adoption de dispositions législatives permettant d'assurer le paiement des pensions alimentaires stipulées dans les ententes de séparation

L'article 134 de la Loi sur les services à l'enfant et à la famille et sur les relations familiales prévoit cette disposition, de la façon suivante:

134. "Toute entente établie en la forme prescrite par règlement et qui comporte une disposition à l'égard du soutien d'une personne à charge par une personne à qui la présente Partie impose une obligation de soutien, y compris le paiement au Ministre d'une somme relative à une assistance ou à un soutien financier que celui-ci a fourni, peut être déposée devant la cour de la manière prescrite par règlement; elle a ensuite la même force exécutoire qu'une ordonnance rendue par la cour en application de la présente Partie sous réserve des dispositions de celle-ci à l'égard des modifications et est réputée avoir été rendue par cette cour."

8. Adoption de dispositions législatives prévoyant des recours particuliers pour assurer le paiement des pensions alimentaires

- a) Ordonnance de saisie-arrêt continue - La Loi sur les services à l'enfant et à la famille et sur les relations familiales prévoit une ordonnance de paiement à l'article 123(3) pour l'exécution des versements réguliers et arriérés. Les règles du N.-B. sur le divorce ont été modifiées en ce sens, en imposant la condition qu'avais soit donné à l'intimé.
- b) Bref d'exécution, mandat de saisie-exécution, saisie mobilière - Les Règles du N.B. sur le divorce permettent l'ordonnance de saisie ou de vente, tandis que la loi provinciale, à l'article 124, prévoit l'enregistrement d'un certificat d'arriérés comme constituant une dette sur jugement.
- c) Emprisonnement - La loi provinciale et les règles sur le divorce prévoient toutes deux cette possibilité.
- d) Amende - Le Nouveau-Brunswick n'a aucune disposition législative en ce sens.

- e) Constitution de sûretés ou cautionnement - La loi provinciale prévoit ce recours à l'article 124(3).
- f) Enregistrement d'une ordonnance contre un bien immobilier - La loi provinciale prévoit, à l'article 124(1), que le certificat d'arriérés puisse être inscrit et enregistré par le tribunal, comme s'il s'agissait d'une créance exécutoire.
- g) Nomination d'un séquestre - Le Nouveau-Brunswick n'a aucune mesure en ce sens.
- h) Mandat d'arrêt, en cas de risque de vente des biens ou de fuite du débiteur - Le Nouveau-Brunswick a prévu ce recours seulement pour les cas de fuite hors du ressort du tribunal.
- i) Ordonnance ex parte restreignant l'aliénation des biens - Le Nouveau-Brunswick a prévu ce recours en vertu de la loi provinciale (article 119) mais non des règles sur le divorce. Voici le texte de l'article 119:

119. "Lorsqu'il y a demande en application de l'article 115 ou comparution sur avis donné en application de l'article 123 ou en attendant cette demande ou cette comparution, ou lorsqu'une ordonnance de soutien a été rendue, la Cour peut rendre toute ordonnance provisoire ou définitive qu'elle estime nécessaire pour empêcher une aliénation ou une dissipation de biens qui compromettrait la réclamation ou l'ordonnance de soutien ou y ferait échec.

9. Adoption du projet de loi uniforme sur l'exécution réciproque des ordonnances alimentaires, conformément aux décisions de la Conférence sur l'uniformisation des lois au Canada

Le Nouveau-Brunswick a pris les mesures législatives recommandées, y inclus la modification de l'article 7(7) c); le tout est actuellement à l'étape de projet de loi.

10. Adoption d'un projet de loi uniforme prévoyant des ordonnances interdisant à l'un des conjoints de molester, d'importuner ou de harceler l'autre conjoint ou un enfant confié à la garde de celui-ci

Le Nouveau-Brunswick a une disposition en ce sens, l'article 128 de la Loi sur les services à l'enfant et à la famille et sur les relations familiales:

128. "A la demande d'une personne qui vit séparée de son conjoint, une Cour peut rendre une ordonnance interdisant au conjoint du demandeur de molester, importuner, harceler ou contrecarrer ce dernier ou tout enfant dont ce dernier a légalement la garde; elle peut aussi enjoindre au conjoint du demandeur de conclure tout engagement qu'elle estime approprié.

11. Adoption de dispositions législatives autorisant la cession des pensions alimentaires au gouvernement provincial, lorsque le bénéficiaire reçoit des prestations d'aide sociale.

Le Nouveau-Brunswick permet une telle procédure, en vertu de l'article 115(3) et (4) de la loi provinciale. Il n'est pas nécessaire qu'il y ait cession écrite, du fait que le Ministre a le pouvoir de réclamer la pension alimentaire avec ou sans le consentement de la personne à charge.

12. Extension du mandat de l'avocat de la Couronne, en matière d'exécution, afin d'y inclure l'exécution des ordonnances étrangères de garde d'enfant

Le Nouveau-Brunswick fournit des services d'exécution de ces ordonnances, par le biais des procureurs de la Couronne.

13. Adoption de dispositions législatives prévoyant des recours précis pour l'exécution des ordonnances de garde d'enfant

Le Nouveau-Brunswick a adopté toutes les suggestions et tous ces recours existent maintenant à l'exception du cautionnement et du dépôt des documents de voyage.

14. Adoption du projet de loi uniforme sur l'exécution des ordonnances de garde d'enfant, afin de mettre en oeuvre la Convention internationale de La Haye sur les aspects civils du rapt d'enfant et d'étendre les principes

énoncés dans cette convention à l'exécution des ordonnances de garde d'enfant à l'intérieur d'une province et entre les provinces.

Le Nouveau-Brunswick a adopté une loi dans ce sens.

15. Nomination de spécialistes du droit de la famille à la magistrature provinciale

Le Nouveau-Brunswick aura éliminé effectivement ce problème, grâce à l'expansion du système des tribunaux de la famille à juridiction intégrale qui sera bientôt étendu à toute la province.

Janvier 1983.

NOUVELLE-ECOSSE

Recommandations touchant des activités provinciales:

1. La Nouvelle-Ecosse a fait des travaux préliminaires en vue de l'installation d'un service informatisé de contrôle des versements de pension alimentaire. Pour l'instant, le traitement se fait toujours de façon manuelle, en attendant la mise sur pied du système informatisé.
2. Cette recommandation est valable mais il faudrait pour cela qu'en Nouvelle-Ecosse, on modifie le Freedom of Information Act. Si la plupart des provinces adoptent cette recommandation, la question sera prise en considération, en vue d'une modification possible de notre politique.
3. La Nouvelle-Ecosse ne dispose pas d'une telle banque informatisée de données.
4. La Nouvelle-Ecosse se conforme essentiellement à cette recommandation. Les percepteurs de pension alimentaire sont tenus de vérifier leurs dossiers de façon régulière et d'intenter des actions en cas de défaut de paiement.
5. Nous étudions cette recommandation de façon active. Elle est appuyée par de nombreux juges de la famille, mais le problème réside dans la nécessité d'engager du personnel qualifié pour établir une procédure d'action qui ne soit pas un recours judiciaire par voie d'audience. De plus, il y a raison de croire que de nombreux réclamants souhaiteront se faire entendre par le tribunal.
6. La règle de prescription d'un an ne s'applique pas en Nouvelle-Ecosse.
7. L'article 49 du Family Maintenance Act prévoit l'exécution des pensions alimentaires stipulées dans les accords de séparation.
8. L'article 39 du Family Maintenance Act dispose que les pensions alimentaires peuvent être recouvrées par voie de saisie-arrêt périodique, d'emprisonnement ou encore, par la délivrance d'une ordonnance d'exécution. On envisage de donner priorité sur toutes autres exécutions à une ordonnance d'exécution en matière d'arrérages de soutien.

9. Il est prévu que la loi uniforme sur l'exécution réciproque des ordonnances alimentaires soit adoptée au printemps 1983.
10. Cette recommandation est à l'étude.
11. Cette recommandation a déjà été étudiée mais n'a pas été retenue, à cause de facteurs de coûts.
12. En Nouvelle-Ecosse, l'exécution des ordonnances étrangères de garde d'enfant n'entre pas dans les attributions de l'avocat de la Couronne.
13. En Nouvelle-Ecosse, il y a eu peu de cas d'exécution d'ordonnances de garde étrangères jusqu'à présent. Avec l'adoption du Child Abduction Act de 1982 (c'est-à-dire la mise en application de Convention de La Haye), cette question sera certainement étudiée en profondeur.
14. La Convention de La Haye est mise en application par le Child Abduction Act de 1982; cette loi n'a pas encore été proclamée.
15. Cette recommandation fera l'objet d'une étude en temps approprié.

Janvier 1983.

ÎLE-DU-PRINCE-ÉDOUARD

Recommandations touchant des activités provinciales:

1. Du fait du faible volume, nous n'avons pas besoin d'un système informatisé pour contrôler le versement des pensions alimentaires.
2. Du fait de notre faible superficie et de notre population réduite, il ne nous est pas difficile de retrouver des personnes.
3. Comme il a été dit auparavant, nous n'avons pas besoin d'une banque de données pour nous aider à faire exécuter les ordonnances de l'Ile-du-Prince-Edouard ou celles d'autres provinces.
4. Nous avons une procédure administrative de recouvrement sur initiative de l'Etat.
5. Le personnel administratif organise des audiences pour les débiteurs sur jugement en défaut et s'adresse au shérif pour le recouvrement suite à un jugement. La demande de confirmation d'une ordonnance de saisie-arrêt sur salaire doit être adressée au juge. Nous avons souvent recours à des procédures en outrage au tribunal.
6. Il n'existe pas de règle de prescription d'un an, bien que nous hésitions à poursuivre pour les versements si l'épouse ou la mère n'a pas essayé de faire exécuter l'ordonnance depuis une assez longue période.
7. Nous avons une loi en ce sens.
8.
 - a) Nous utilisons ce recours.
 - b) Nous utilisons ce recours.
 - c) Nous utilisons ce recours, quoique rarement.
 - d) Nous n'utilisons pas ce recours.
 - e) Nous n'utilisons pas ce recours.
 - f) Nous utilisons ce recours.
 - g) Nous n'utilisons pas ce recours.
 - h) Ce recours existe, quoique nous tendions à attendre que l'autre province se charge de l'exécution.
 - i) Ce recours est offert par voie d'injonction, mais on tend à donner avis à l'autre partie.
9. Nous prévoyons que cette loi sera adoptée au cours du printemps 1983.

10. Nous reconnaissons le besoin d'uniformisation des lois, bien que ce recours existe déjà à l'île-du-Prince-Édouard, par le biais d'une demande à un juge.
11. Nous avons de la législation à cet effet, mais les services sociaux n'y recourent pas souvent.
12. Le gouvernement n'a pas l'intention de fournir les services d'un avocat sauf dans les cas d'aide juridique ou pour les affaires prévues dans la Convention de La Haye.
13. a) Pour aider à la récupération de l'enfant:
 - i) pas utilisé;
 - ii) maintenant disponible à la suite d'une demande faite au juge;
 - iii) n'existe pas mais la police accepte de fournir son aide;
 - iv) pas utilisé.b) sanction pénale:
 - i) recours existant actuellement;
 - ii) pas utilisé.
14. Nous pensons que la Convention de La Haye sera mise en application au printemps.
15. Un juge d'une cour supérieure entend toutes les affaires de droit de la famille, sauf les voies de fait entre époux prévus par le Code criminel. Nous n'avons pas l'intention de donner juridiction en droit de la famille à des juges nommés par la province.

Janvier 1983.

TERRE-NEUVE

Recommandations touchant des activités provinciales

1. Rien n'est actuellement prévu pour introduire un système informatisé de contrôle du paiement des pensions alimentaires dans les palais de Justice de Terre-Neuve. Une étude touchant l'informatisation a récemment été effectuée au Tribunal de la famille à juridiction intégrale et la proposition a été rejetée en raison de considérations d'ordre pécuniaire.
2. Aucune démarche n'a été entreprise pour légiférer en ce domaine à Terre-Neuve.
3. Présentement irréalisable.
4. En ce qui concerne le système d'exécution partiellement automatique présentement en usage au Tribunal de la famille à juridiction intégrale, les mesures d'exécution sont entreprises par l'agent chargé du recouvrement des pensions alimentaires. Puisque ce système donne bons résultats, il est permis d'espérer qu'il sera étendu à toute la province.
5. Des services de médiation sont offerts par le Tribunal de la famille à juridiction intégrale, afin de favoriser l'exécution de la pension alimentaire sans recours aux tribunaux. Les ordonnances sur les mesures accessoires sont exécutées au moyen de la procédure d'exécution et ne nécessitent la tenue d'aucune audition par le tribunal.
6. Inapplicable. Il n'existe dans la province aucune règle relative aux arrérages accumulés depuis plus d'un an.
7. Aucune mesure n'est actuellement prévue en ce domaine.
8. Tous les recours exposés dans cette recommandation, abstraction faite des amendes, et la constitution de sûretés et de la nomination d'un séquestre sont employés à Terre-Neuve. Les recours prévus à l'alinéa a) ne sont possibles que sur consentement.
9. En 1983, le gouvernement de Terre-Neuve déposera devant la Chambre d'assemblée la Uniform Reciprocal Enforcement of Maintenance Orders Act, incluant la version modifiée de l'article 7(7).

10. Aucune mesure législative n'est présentement envisagée en ce domaine, toutefois, ce recours est actuellement disponible par voie judiciaire.
11. Cette mesure fait présentement l'objet d'un examen; elle est prise en considération par le Tribunal de la famille à compétence intégrale.
12. Cette question est actuellement à l'étude. La Couronne provinciale n'assure actuellement pas les services d'un avocat en matière d'exécution de pension alimentaire.
13. La loi en matière de droit de la famille fait actuellement l'objet d'une révision dans cette province et les problèmes portant sur le rapt d'enfants constituent l'une des préoccupations principales de cette révision.
14. Le gouvernement de Terre-Neuve a l'intention de déposer un projet de loi visant l'adoption, en 1983, de la Convention internationale de la Haye, avec une réserve portant sur les frais juridiques. Le Procureur général constituera l'autorité centrale.
15. A Terre-Neuve, les juges nommés par le gouvernement provincial ne possèdent qu'une compétence limitée en matière de droit de la famille.

Le 8 février 1983

Canada

Recommandations adressées à l'attention du gouvernement fédéral:

16. MODIFICATION DE L'ARTICLE 15 DE LA LOI SUR LE DIVORCE, AFIN DE PERMETTRE L'ENREGISTREMENT DES ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANT PAR UN TRIBUNAL DÉSIGNÉ PAR LES PROVINCES EN SUS OU AU LIEU DE LA COUR SUPÉRIEURE DE CHAQUE PROVINCE.

Cette recommandation est présentement à l'étude au sein du ministère de la Justice, même si dans certaines provinces (entre autres, la Colombie-Britannique et la Saskatchewan) le problème a été résolu par des modifications apportées aux règles sur le divorce.

17. MODIFICATION DE L'ARTICLE 11 DE LA LOI SUR LE DIVORCE, AFIN D'AUTORISER LES ORDONNANCES PORTANT PAIEMENT ET GARANTIE DE PAIEMENT D'UNE SOMME GLOBALE OU DE SOMMES ÉCHELONNÉES.

Cette recommandation est présentement à l'étude au sein du ministère de la Justice.

18. NOMINATION DE SPÉCIALISTES OU DROIT DE LA FAMILLE À LA MAGISTRATURE FÉDÉRALE

Lorsque des postes de juge devront être comblés, le gouvernement fédéral continuera de chercher à identifier les spécialistes en droit de la famille, lorsqu'il étudiera les candidatures à ces postes.

19. ADOPTION DU PROJET DE LOI C-38 (LOI SUR LA SAISIE-ARRÊT ET LA DISTRACTION DE PENSIONS)

Le projet de loi C-38 a été adopté et a reçu la sanction royale le 22 juin 1982. La première partie de cette loi est entrée en vigueur le 11 mars 1983 et l'on prévoit que la partie II entrera en vigueur plus tard au cours de l'été 1983.

20. ADOPTION DE DISPOSITIONS LÉGISLATIVES VISANT À PERMETTRE AUX CRÉANCIERS ALIMENTAIRES DE DEMANDER AUX MINISTRES FÉDÉRAUX DE SAISIR OU DE DISTRAIRE LES SOMMES ÉCHUES OU DUES AU DÉBITEUR DE L'OBLIGATION.

Cette recommandation est présentement à l'étude au sein du ministère de la Justice. Il faudrait noter qu'en vertu du projet de loi C-38, certaines prestations de pension peuvent déjà être distraites.

21. ADOPTION DE DISPOSITIONS LÉGISLATIVES OBLIGEANT TOUS LES ORGANISMES FÉDÉRAUX ET LES PARTICULIERS ASSUJETTIS À LA LÉGISLATION FÉDÉRALE À DIVULGUER, SUR ORDRE DU TRIBUNAL, L'ADRESSE, LE LIEU DE TRAVAIL OU D'AUTRES RENSEIGNEMENTS PERMETTANT DE RETRACER LES MEMBRES D'UNE MÊME FAMILLE AUX FINS DE DEMANDER OU D'EXÉCUTER DES ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANT.

Cette recommandation est présentement à l'étude au sein du ministère de la Justice.

22. ADOPTION DE DISPOSITIONS LÉGISLATIVES LIMITANT L'UTILISATION OU L'ÉMISSION DE PASSEPORTS OU AUTRES DOCUMENTS DE VOYAGE RELATIFS AUX ENFANTS.

Ce sujet est présentement à l'étude au sein du ministère des Affaires extérieures.

23. MODIFICATION DE LA LOI SUR LE DIVORCE, AFIN DE PERMETTRE LA CESSION DES PRESTATIONS DE SOUTIEN FINANCIER À LA COURONNE PROVINCIALE OU À UN MINISTRE FÉDÉRAL.

Cette recommandation est présentement à l'étude au sein du ministère de la Justice.

24. MODIFICATION DE L'ARTICLE 11(I) DE LA LOI SUR LE DIVORCE, AFIN DE PRÉVOIR QUE LES OBLIGATIONS ALIMENTAIRES SOIENT AUTOMATIQUEMENT EXÉCUTOIRES À MÊME LA SUCCESSION DU DÉBITEUR, À MOINS QUE LE TRIBUNAL N'EN ORDONNE AUTREMENT.

Cette recommandation est présentement à l'étude au sein du ministère de la Justice. Comme ceci aurait des conséquences tant au niveau des seconds mariages que des lois provinciales sur les successions, il faudra y accorder une attention particulière.

25. MODIFICATION DE L'ARTICLE II(2) DE LA LOI SUR LE DIVORCE, AFIN DE PERMETTRE LA MODIFICATION DES ORDONNANCES DE PENSION ALIMENTAIRE ET DE GARDE D'ENFANT DEVANT UN TRIBUNAL AUTRE QUE LE TRIBUNAL INITIAL

Cette recommandation est présentement à l'étude au sein du ministère de la Justice.

RECENSEMENT DU PERSONNEL ET DES
PROCÉDURES D'EXÉCUTION
DES ORDONNANCES DE SOUTIEN
ET DE GARDE DES ENFANTS

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CANADA

Enlèvement international d'enfant:

Organisme
compétent:

Section du droit international privé
Direction des consultations juridiques
Ministère des Affaires extérieures
4e étage, Tour A
Immeuble Lester B. Pearson
125, promenade Sussex
Ottawa (Ontario)
K1A 0G2 995-8807

Sommaire:

Le ministère des Affaires extérieures est chargé de toutes les questions relatives à l'enlèvement international d'enfant avant la ratification de la Convention internationale de La Haye sur les aspects civils du rapt d'enfant et, à la suite de la ratification de celle-ci, des questions relatives à l'enlèvement international d'enfant impliquant des pays qui ne sont pas liés par la convention.

Personne ressource:

Micheline Langlois
Avocat-conseil
Section du droit constitutionnel et international
Ministère de la Justice
Angle Kent et Wellington
Ottawa (Ontario) 996-8127

Sommaire:

Il est possible d'entrer en rapport avec Mme Langlois pour obtenir des renseignements concernant la Convention internationale de La Haye sur les aspects civils du rapt d'enfant.

Saisie-arrêt du traitement des fonctionnaires fédéraux:

Législation
pertinente:

Loi sur la saisie-arrêt et la
distriction de pensions
Règlement sur la saisie-arrêt et la
distriction de pensions

Organisme
compétent:

Ministère de la Justice
Bureau régional de Vancouver
Royal Centre
1900-1055 West Georgia Street
Vancouver (Colombie-Britannique)
V6E 3P9
À l'attention du Greffe de la
saisie-arrêt

Ministère de la Justice
Bureau régional D'Edmonton
Pièce 928, Royal Trust Tower
Edmonton Centre
Edmonton (Alberta)
T5J 2Z2
À l'attention du Greffe de la
saisie-arrêt

Ministère de la Justice
Bureau régional de Saskatoon
Pièce 301, Churchill Building
229-4th Avenue South
Saskatoon (Saskatchewan)
S7K 4E4
À l'attention du Greffe de la
saisie-arrêt

Ministère de la Justice
Bureau régional de Winnipeg
301 Centennial House
310, Av. Broadway
Winnipeg (Manitoba)
R3C 0S6
À l'attention du Greffe de la
saisie-arrêt

Ministère de la Justice
Bureau régional de Toronto
P.O. Box 57
Toronto Dominion Centre
Toronto (Ontario)
M5K 1E7
À l'attention du Greffe de la
saisie-arrêt

Ministère de la Justice
Immeuble de la Justice
239, rue Wellington
Ottawa (Ontario)
K1A 0H8
À l'attention du Greffe de la
saisie-arrêt

Ministère de la Justice
Bureau régional de Montréal
C.P. 938
Place d'Armes
Montréal (Québec)
H2Y 3J4
A l'attention du Greffe de la
saisie-arrêt

Bureau du directeur de l'Impôt
65, rue Canterbury
C.P. 6300
Succursale postale A
Saint-Jean (Nouveau-Brunswick)
E2L 4H9
A l'attention du Greffe de la
saisie-arrêt

Ministère de la Justice
Bureau régional de Halifax
Toronto-Dominion Bank Building
1791 Barrington Street
12th floor
Halifax (Nouvelle-Écosse)
B1C 3L1
A l'attention du Greffe de la
saisie-arrêt

Ministère de la Justice
a/s: Commission des allocations aux
anciens combattants
Dominion Building
Box 7700
Charlottetown (Île-du-Prince-Édouard)
C1A 8M9
A l'attention du Greffe de la
saisie-arrêt

Bureau du directeur de l'Impôt
Bureau de district de Saint-Jean
165 Duckworth Street
Sir Humphrey Gilbert Building
St. John's (Terre-Neuve)
A1C 5X6
A l'attention du Greffe de la
saisie-arrêt

Ministère de la Justice
Bureau régional de Yellowknife
Suite 206, Bromley Building
Box 8
Yellowknife (Territoires du Nord-Ouest)
XOE 1H0
A l'attention du Greffe de la
saisie-arrêt

Bureau du Procureur de la
Couronne de Whitehorse
Pièce 205, Casca Building
3105 Third Avenue
Box 1076
Whitehorse (Territoire du Yukon)
Y1A 1Z4
A l'attention du Greffe de la
saisie-arrêt

Sommaire:

Sur réception d'un bref de saisie-arrêt valide, celui-ci doit être signifié au greffe approprié de la saisie-arrêt, figurant sur la liste ci-dessus.

Il est possible d'obtenir des renseignements supplémentaires en entrant en rapport avec ces greffes de la saisie-arrêt.

CHAPITRE 2: COLOMBIE-BRITANNIQUE

Exécution réciproque des ordonnances de soutien:

Loi pertinente: Family Relations Act

Agent d'exécutions: Ministry of Attorney General
609 Broughton Street
Victoria, B.C.
V8V 1X4

Personne à
consulter:

Ms. Brenda Walt
Court Services
Ministry of Attorney General
850 Burdett Street
Victoria, B.C.
V8W 1B4

(604) 387-1521

Résumé:

Lors de la demande d'exécution réciproque, tous les aspects administratifs sont confiés à la personne responsable dont le nom est mentionné ci-dessus. C'est l'avocat nommé par le Procureur général qui se chargera de l'exécution devant la Cour provinciale.

L'intimé doit comparaître devant le tribunal pour expliquer pourquoi une ordonnance d'exécution ne devrait pas être prononcée et, selon les faits et les renseignements disponibles, une ordonnance pourrait être rendue, le contraignant à payer, à consentir une hypothèque foncière ou encore, à subir une saisie-arrêt, une saisie sur salaire ou une peine de prison allant jusqu'à trente jours, en cas de défaut. Dans certains cas, un mandat d'exécution sera émis et une peine d'emprisonnement imposée pour défaut répété d'effectuer les paiements prévus par l'ordonnance.

Tribunaux et greffes:

Toutes les questions relatives à l'exécution réciproque des ordonnances de soutien sont centralisées, pour la province, par la personne à consulter.

Conseillers auprès du Tribunal de la famille:

La province est dotée d'environ 200 conseillers auprès du Tribunal de la famille, répartis dans 83 localités; certains de ces conseillers travaillent seulement à mi-temps. Si cela leur est demandé, ces conseillers essayent de négocier un accord ou la modification d'un accord entre le requérant et l'intimé. Toutefois, c'est rarement le cas puisque, la plupart du temps, l'intimé, après avoir reçu la citation à comparaître, cherchera à s'entendre avec l'avocat nommé par le requérant.

Exécution des ordonnances étrangères de garde d'enfant:

Législation
pertinente:

Articles 38 à 42 de la Family Relation
Act

Agent d'exécution: Avocat de pratique privée

Résumé:

Il faut recouvrir aux services d'un avocat privé en ce qui a trait aux aspects civils de la violation d'une ordonnance de garde d'enfants émise par un tribunal étranger. Toute question impliquant un aspect de droit criminel relève du procureur de la Couronne du lieu de résidence de l'enfant ou peut encore être renvoyée à la Direction de la justice criminelle du présent ministère, 609 Broughton Street, Victoria (C.-B.) (604) 384-4434.

Service de recherche:

Un service de recherche a été créé dans d'autres buts et, sur une base expérimentale, a été rendu disponible pour des questions de droit de la famille. Les demandes doivent être adressées au Service du droit de la famille, Ministère du Procureur général, 609 Broughton Street, Victoria (B.-C.) V8V 1X4, (604) 384-4434. La rapidité et le succès de l'affaire tiennent presque exclusivement à la quantité de détails fournis. Ci-joint une formule de demande de recherche.

ANY/ALL INFO HELPS

Full name _____
Alias (if any) _____
Social Insurance No. _____
Driver's Licence & Prov. _____

Motor-vehicle Licence No. _____

FPS No. _____
Last known address and phone No.: _____

Birthdate _____

Married _____ Single _____ Other _____

Name and Address of next of kin: _____

Occupation _____
Employer _____
Address _____
Telephone No. _____

COPIES ATTACHED (check):

Traffic Ticket _____
Fine Information Notice _____

Court documents _____
Other (specify below) _____

REMARKS (Characteristics, etc.):

Originating office, address, and
phone No.: _____

Name of person to ask for when
checking back with originator: _____

File No. to quote _____

PRIORITY OF REQUEST (check):

Urgent _____
By (date) _____
Not Urgent _____

NATURE OF REQUEST (check):

Warrant _____
Summons _____
Fine _____
Other (specify below): _____

Note: For use of Tracing Unit
only.

Investigator _____
File No. _____
Date In _____
Region _____

Ordonnances intraprovinciales de soutien:

Lois pertinentes: La Loi sur le divorce, la Family Relations Act, la Family & Child Service Act et la Child Paternity & Support Act

Agent d'exécution: La Loi sur le divorce et la Family Relations Act -
Procureur privé.
Autres lois - Ministère du Procureur général.

Résumé: Lorsque la Couronne a un intérêt à défendre ou s'il s'agit de l'exécution réciproque d'ordonnances de soutien, le ministère s'occupera de l'affaire; autrement, cela sera considéré comme une question privée. La seule exception à ce dernier cas intervient lorsqu'il y a des enfants et qu'il y a eu ou qu'il est probable qu'il y aura, de la violence physique. Dans ces circonstances, le Ministère nommera un avocat qui demandera les ordonnances nécessaires pour rétablir la situation, y compris les ordonnances de soutien.

Ordonnances intraprovinciales de garde d'enfant:

Lois pertinentes: Loi sur le divorce, Family Relations Act

Agent d'exécution: Avocat de pratique privée

Résumé: Il s'agit d'une question privée, sauf lorsqu'il y a des enfants et qu'il y a eu ou qu'il est probable qu'il y aura de la violence physique. Dans ces circonstances, le service du droit de la famille du Ministère, (604) 384-4434, nommera un avocat qui demandera les ordonnances nécessaires, y compris celles qui se rapportent à la garde des enfants.

Aide juridique: La province est dotée d'un service d'aide juridique administré par la Legal Services Society, 555, West Hastings Street, Vancouver (C.-B.) V6B 4N6 ((604) 689-0741).

Les services offerts par cette association et les critères d'admissibilité utilisés changent

Le service du droit de la famille fournit des services juridiques pour tout ce qui relève du surintendant du Family & Child Service.

Ile-du-Prince-Édouard
Québec
Saskatchewan
Territoire du Yukon

États-Unis

Californie
Colorado
Connecticut
Idaho
Kansas
Maine
Michigan
Minnesota
Montana
Nebraska
Nevada
New Hampshire
New Mexico
État de New York
Dakota du Nord
Ohio
Orégon
Pennsylvanie
Vermont
Virginie
Washington
Wisconsin

Autres:

Territoire de la capitale australienne
Autriche
Île de Guernesey
Angleterre (y compris les Galles et l'Écosse) et Irlande du Nord
Fidji
Gibraltar
Hong-Kong
Île de la Barbade et dépendances
Île de Man
Nouvelles-Galles du Sud (Australie)
Nouvelle-Zélande (y compris les îles Cook)
Territoire d'Australie septentrionale
Norvège
Queensland (Australie)
République d'Afrique du Sud
Singapour
Australie méridionale
Rhodésie du Sud
États de Jersey

Tasmanie (Australie)
Territoires de Papouasie et de Nouvelle-Guinée
Victoria (Australie)
Australie occidentale
République fédérale d'Allemagne (y compris le Territoire de
Berlin)

CHAPITRE 3: ALBERTA

Exécution réciproque des ordonnances de soutien:

Lois pertinentes: Reciprocal Enforcement of Maintenance Orders Act et Domestic Relations Act

Agent d'exécution: Ministère du Procureur général

Personne à
consulter: M. Wanda Fish
Crown Counsel
Department of the Attorney General
Family and Juvenile Branch
Room 2026, Law Courts Building
1A Sir Winston Churchill Square
Edmonton, Alberta
T5J 0R2

Résumé: Dès qu'il en est référé à elle, la personne à consulter s'occupera de toutes les questions administratives. A Edmonton et à Calgary, des officiers du ministère du Procureur général s'occuperont de la présentation de la demande d'exécution. Dans les autres secteurs, on retiendra, si nécessaire, les services d'un avocat de pratique privé, pour les fins d'une demande contestée ou pour la présentation d'une plaidoirie.

Les procédures ressemblent à celles d'une audience de justification. Une ordonnance de paiement est habituellement rendue. La saisie du salaire, la saisie-exécution immobilière et l'incarcération peuvent également être ordonnées.

Tribunaux et greffes:

Toutes les demandes sont actuellement gérées à partir d'un point central, par la personne à consulter dans la province.

Conseillers auprès du Tribunal de la famille:

Le "Department of Social Services and Community Health" est responsable d'assurer les services de conseillers et de travailleurs sociaux reliés au Tribunal de la famille. Ces services sont offerts à tous, qu'ils reçoivent ou non des prestations d'assurance sociale de la province.

Aide juridique:

Un service d'aide juridique est disponible. Toutes les demandes doivent être adressées au Bureau du directeur:

M. Barry J. Cavanaugh
Legal Aid Society
3rd Floor, Melton Building
10310 Jasper Avenue
Edmonton, Alberta
T5J 2W4

(403) 427-7575

Protection de l'enfant:

Loi pertinente: Child Welfare Act

Agent d'exécution: Department of Social Services and
Community Health
Seventh Street Plaza, South Tower
10030, 107 Street
Edmonton, Alberta

Personne à
consulter:

Sharon Heron
Director of Child Welfare
6th floor, Centre West Building
10030, 107 Street
Edmonton, Alberta (403) 427-6370

Le ministère du Procureur général est
responsable des services juridiques pour
le "Director of Child Welfare".

Personne à
consulter:

Director of the Family
and Juvenile Branch,
3rd Floor, Bowker Building
9833, 109 Street
Edmonton, Alberta
T5K 2E8 (403) 427-5050

Toutes les questions relatives au droit de la famille:

M. John R. Basey
Director, Family
and Juvenile Branch,
Department of the Attorney General
Criminal Justice Division
3rd Floor, Bowker Building
9833, 109 Street
Edmonton, Alberta
T5K 2E8 (403) 427-5050

Accords internationaux de réciprocité:

Canada: toutes les provinces, ainsi que les territoires.

États-Unis: Californie

Autres: Angleterre
Pays de Galles
Écosse
Barbade
Malte
Île de Man
République d'Afrique du Sud
Singapour
Nouvelle-Zélande
États de Jersey

Australie: Victoria
Nouvelles-Galles du Sud
Queensland
Australie méridionale
Tasmanie
Australie occidentale
Territoire de la capitale australienne
Territoire d'Australie septentrionale
Papouasie et Nouvelle-Guinée

CHAPITRE 4: SASKATCHEWAN

Exécution réciproque des ordonnances de soutien:

Loi pertinente: La Reciprocal Enforcement of Maintenance Orders Act, la Loi sur le divorce et les Queen's Bench Divorce Act Rules.

Agent d'exécution: Department of Justice
2476 Victoria Avenue
Regina, Saskatchewan
S4P 3V7

Personne à
consulter:

Ms. Judith Falle
Crown Solicitor
Civil Law Branch
Department of Justice
2476 Victoria Avenue
Regina, Saskatchewan
S4P 3V7

565-5461

Mr. Wayne Mulholland
Crown Solicitor
Civil Law Branch
Department of Justice
(comme ci-haut)

565-5470

Ms. Marg Pelletier
Secretary
Civil Law Branch
(comme ci-haut)

565-5462

Résumé:

A la demande d'un tribunal homologue, les procureurs de la Direction du droit civil veilleront à l'exécution des ordonnances étrangères de soutien et se présenteront à cette fin aux audiences du tribunal (Cour du Banc de la reine).

L'exécution des ordonnances d'entretien se fait habituellement par des saisies-arrêts (Attachment of Debts Act), des saisies-exécution (Executions Act), des inscriptions d'hypothèques foncières (Deserted Wives' and Children's Maintenance Act) et des audiences de justification.

Tribunaux et greffiers:

Court House, Battleford Saskatchewan S0M 0E0	Local Registrar D.I. Dament (937-2688)
Court House, Estevan	Local Registrar D.W. Henneberg (634-6411)
Court House, Gravelbourg	Local Registrar J.W. Kessler (648-2233)
Court House, Humboldt	Local Registrar W. Siemens (682-2522)
Court House, Kerrobert	Local Registrar (834-2221)
Court House, Melfort Provincial Building S0E 1A0	Local Registrar V.J. Johansen (752-9388)
Court House, Melville	Local Registrar S. Urbanowski (728-4424)
Court House, Moose Jaw S6H 4P1	Local Registrar D. Paquin (693-6105)
Court House, Moosomin	Local Registrar W.E. Dammann (435-2929)
Court House, Prince Albert S6H 4W7	Local Registrar I.W. Dillabaugh (764-4462)
Court House, Regina, 2425 Victoria Avenue S4P 3V7	Local Registrar G. Ullman (565-5384)
Court House, Saskatoon, 520 Spadina Crescent E. S7K 3G7	Local Registrar M. Petersen (664-5137)
Court House, Shaunavon	Local Registrar M.G. Koski (297-2531)
Court House, Swift Current, S9H 0J4	Local Registrar M.G. Koski (773-7345)

Court House, Weyburn	Local Registrar W.E. Dammann (842-4657)
Court House, Wynyard	Local Registrar W. Siemens (554-2113)
Court House, Yorkton S3N 0C2	Local Registrar S. Urbanowski (783-9414)
Unified Family Court 9th Floor, Canterbury Towers 224 - 4th Avenue S. Saskatoon, Saskatchewan S7K 5M5	Local Registrar M. Herauf (664-5202)

Conseillers auprès du Tribunal de la famille:

Unified Family Court 9th Floor, Canterbury Towers 224 - 4th Avenue South Saskatoon, Saskatchewan S7K 5M5	Co-ordinator of Social Services (for Unified Court) (664-6107)
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Exécution des ordonnances étrangères de garde d'enfant:

Lois pertinentes: Extra-Provincial Custody Order
 Enforcement Act
 Loi sur le divorce

Agent d'exécution: Avocat de pratique privée

Résumé: La Saskatchewan n'intervient pas dans l'exécution des ordonnances étrangères de garde d'enfant, sauf lorsque la question relève d'articles du Code criminel portant sur l'enlèvement d'enfants. Quiconque veut faire exécuter une telle ordonnance en Saskatchewan doit engager son propre avocat.

Service de recherche:

En Saskatchewan il n'existe pas de service de recherche relativement aux ordonnances de soutien et de garde, si ce n'est le recours habituel au bureau du shérif pour la signification des documents.

Ordonnances intraprovinciales de soutien:

Lois pertinentes: Deserted Wives' and Children's
Maintenance Act
Children of Unmarried Parents Act
Infants Act

Agent d'exécution: Avocat de pratique privée

Résumé: Le ministère de la Justice de la Saskatchewan n'intervient pas au nom des habitants de la province pour obtenir ou faire exécuter des ordonnances de soutien lorsque d'autres habitants de la province sont en cause. Quiconque veut faire exécuter une telle ordonnance en Saskatchewan doit engager son propre avocat ou recourir à l'aide juridique (Legal Aid).

Ordonnances intraprovinciales de garde d'enfant:

Lois pertinentes: Infants Act
Loi sur le divorce

Autorité
d'exécution: Avocat de pratique privée

Résumé: Le ministère de la Justice de la Saskatchewan n'agit pas au nom d'habitants de la province pour obtenir ou faire exécuter des ordonnances de garde d'enfants impliquant d'autres habitants de la Saskatchewan; il faut alors engager son propre avocat.

Aide juridique:

Saskatchewan Community
Legal Services Commission
311-21st Street East
Saskatoon, S7K 0C1

Chairman, Ian J. Wilson
General Counsel,
Harold P. Pick,
Q.C.
Staff Solicitor,
Sheila P. Whelan

Moose Jaw & District
Legal Services Society
113-110 Ominica St. W.
Moose Jaw, S6H 6V2

Legal Director,
Mervyn Shaw

Regina Community Legal
Services Society
2331 - 11th Avenue
Regina, S4P 0K2

Director,
Michael B. Ryan

Valley Legal Assistance
Clinic Society
203 - 220 - 3rd Avenue S.
Saskatoon, S7K 1M1

Legal Director,
Betty Lou Huculak

Saskatoon Legal Assistance
Clinic Society
115 - 20th Street West
Saskatoon, S7M 0W7

Legal Director,
Edward Holgate

Meadow Lake & District Legal
Services Society
220 Centre Street, Box 1630
Meadow Lake, S0M 1V0

Legal Director,
George Thurlow

Prince Albert & District
Community Legal Services
Society
110 - 11th Street East
Prince Albert, S6V 1A1

Legal Director,
James Crane

Battleford & Area Legal
Services Society
1192 - 103rd Street
North Battleford, S9A 1K6

Legal Director,
Donald Cameron

Parkland Legal Assistance
Society
8 Myrtle Avenue, Box 69
Yorkton, S3N 2V6

Legal Director,
David B. Bright

Southwest Community Legal
Services Society
150 - 1st Avenue N.W.,
Box 817
Swift Current, S9H 3W8

Legal Director

Pasqua Community Legal
Services Society
101 Burrows West, Box 2680
Melfort, S0E 1A0

Legal Director,
Jane Lancaster

Qu'Appelle Region Community
Legal Services Society
3-281 Albert Street
Regina, S4R 2N5

Legal Director,
David W. Andrews

South East Saskatchewan
Legal Services Society
1314 B - 3rd Street, Box 326
Estevan, S4A 2A4

Legal Director,
Timothy White

Yetha Ayisiniwk Legal
Services Society
P.O. Box 510
La Ronge, S0J 1L0

Legal Director,
Timothy Quigley

Protection de l'enfance:

Loi pertinente: Family Services Act

Agent d'exécution: Department of Social Service
1920 Broad Street
Regina, Saskatchewan, S4P 3V6

Personne à
consulter:

Ms. Betty Ann Pottruff
Co-ordinator, Legal Services
for Social Services
2476 Victoria Avenue
Regina, Saskatchewan 565-5360
S4P 3V7, or as above 565-3603

or

Mr. Richard Hazel
Co-ordinator, Child Protection
Services, 1920 Broad Street
(as above) 565-3648

Résumé:

Le ministère du Procureur général ou les
agents rémunérés à l'acte agissent au
nom du ministère des affaires sociales
dans les causes de protection de

l'enfance. La Family Services Act ne prévoit rien pour l'exécution des ordonnances extra-provinciales de tutelle.

Curatelle publique ou tutelle officielle:

Loi pertinente: Infants Act

Agent d'exécution: Department of Justice
2476 Victoria Avenue
Regina, Saskatchewan
S4P 3V7

Personne à
consulter: Ms. Lorelle Schoenfeld
Deputy Official Guardian
(comme ci-haut) 565-5441

Résumé: Le tuteur officiel agit au nom de l'enfant dans les questions successorales ou si la Cour le lui ordonne, mais il n'intervient pas, en général, dans les questions de garde ou de soutien d'enfant.

Toutes les questions relatives au droit de la famille:

Ms. Betty Ann Pottruff
Co-ordinator, Legal Services
for Social Services
Department of Justice
2476 Victoria Avenue
Regina, Saskatchewan
S4P 3V7 565-5360

Accords internationaux de réciprocité:

États-Unis:

Californie
Delaware
Maryland
Massachusetts
Minnesota
New York
Caroline du Nord
Dakota du Nord

Autres:

Territoire de la capitale australienne
Barbade
Fidji
Guernesey
Île de Man
Jersey
Nouvelle-Galles du Sud (Australie)
Nouvelle-Zélande
Territoire d'Australie septentrionale
Papouasie et Nouvelle-Guinée
Queensland (Australie)
Tasmanie (Australie)
Royaume-Uni
Victoria (Australie)
Australie occidentale (Australie)
Zimbabwe

CHAPITRE 5: MANITOBA

Exécution réciproque des ordonnances de soutien:

Lois pertinentes: Loi sur l'exécution réciproque des ordonnances de soutien
Loi sur l'obligation alimentaire

Agent d'exécution: Department of the Attorney General
Civil Litigation Branch
6th Floor - 405 Broadway Avenue
Winnipeg, Manitoba
R3C 3L6

Personne à consulter: Ms. Catherine Everett
Departmental Solicitor
Family Law Unit
Civil Litigation Branch
Department of the Attorney General
(Même adresse que ci-dessus) 944-2850

Résumé: A la demande d'un tribunal homologue, les procureurs de la direction des litiges civils se chargent de faire exécuter les ordonnances étrangères de soutien présentées aux juges de la Cour provinciale (Division de la famille) à Winnipeg. A l'extérieur de cette ville, ce rôle est confié à des fonctionnaires désignés, rattachés au tribunal.

Quant aux ordonnances provisoires de soutien qui sont présentées pour confirmation au Manitoba, c'est la direction des litiges civils, ou un fonctionnaire agissant pour le compte de celle-ci, qui représentera le plaignant.

Les ordonnances de soutien sont habituellement exécutées au moyen d'une ordonnance de saisie-arrêt ou d'une audience de justification. La Partie IV de la Loi sur l'obligation alimentaire expose les recours disponibles.

Exécution des ordonnances de garde d'enfant:

Lois pertinentes: Loi sur l'exécution de la garde de l'enfant
Loi sur le divorce

Agent d'exécution: L'avocat de la Couronne rattaché au service du droit de la famille au sein du ministère du Procureur général ou un avocat engagé au nom de la Couronne.

Résumé: Le ministère du Procureur général du Manitoba fournit un avocat de la Couronne pour l'exécution des ordonnances étrangères de garde, conformément à la Loi sur l'exécution de la garde de l'enfant ou à la Loi sur le divorce. Toute personne souhaitant faire exécuter une ordonnance étrangère de garde au Manitoba doit se mettre en rapport avec le ministère du Procureur général.

Personne à consulter: Ms. Robyn Moglove Diamond
Head of the Family Law Unit
Civil Litigation Branch
Department of the Attorney General
6th Floor
405 Broadway
Winnipeg, Manitoba
R3C 3L6

Service de recherche:

Le fonctionnaire désigné rattaché au Tribunal de la famille aide à rechercher les personnes, pour l'exécution des ordonnances de soutien prononcées par des tribunaux canadiens.

Ordonnances intraprovinciales de soutien:

Loi pertinente: Loi sur l'obligation alimentaire

Agent d'exécution: Le programme d'exécution des ordonnances de soutien mis en oeuvre par le ministère du Procureur général.

Résumé: Les ordonnances de soutien, qu'elles soient intra ou interprovinciales, peuvent être exécutées au Manitoba par l'intermédiaire du programme informatisé d'exécution des ordonnances de soutien, mis en oeuvre par le ministère du Procureur général. La Partie IV de la Loi sur l'obligation alimentaire indique la procédure à suivre. Les ordonnances de soutien qui sont enregistrées dans le

programme font l'objet d'un contrôle régulier par ordinateur qui prend automatiquement note de tout défaut de paiement de l'allocation de soutien. Advenant le défaut de paiement, les procédures commencent de façon automatique, au nom du bénéficiaire, sans que cette personne n'ait besoin d'intenter personnellement une action. Dix jours ouvrables après la date d'échéance du paiement, lorsque l'allocation n'a pas été reçue, le nom du débiteur en défaut apparaît sur le registre des retards de dix jours. Le dossier est retiré manuellement et des mesures appropriées sont prises, notamment la saisie-arrêt, l'audience de justification ou l'émission d'un mandat. La saisie-arrêt constitue la meilleure procédure d'exécution. Cependant, lorsque cette mesure ne convient pas ou ne suffit pas, la question est présentée au tribunal en vue d'une audience de justification. A l'audience, la direction des litiges civils du ministère du Procureur général fournit habituellement les services d'un avocat pour représenter le plaignant ou la plaignante. Dans certaines zones rurales du Manitoba, c'est un fonctionnaire désigné qui comparaît au nom du plaignant ou de la plaignante.

Ordonnances intraprovinciales de garde:

Lois pertinentes: Loi sur l'exécution de la garde de l'enfant et
Loi sur le divorce

Agent d'exécution: Avocat de pratique privée

Protection de l'enfance:

Loi pertinente: Child Welfare Act

Autorité
d'exécution:

Le directeur du bien-être des enfants,
les agences privées de soins aux enfants
ou le comité sur le bien-être des
enfants.

Personne à
consulter:

Ms. Robyn Moglove Diamond
Head of the Family Law Unit
Civil Litigation Branch
Department of the Attorney General
6th Floor
405 Broadway
Winnipeg, Manitoba
R3C 3L6

944-2841

Curateur public

Lois pertinentes:

Public Trustee Act
Queen's Bench Act

Agent d'exécution:

The Office of the Public Trustee,
Department of the Attorney General
7th Floor
405 Broadway Avenue
Winnipeg, Manitoba
R3C 3L6

Personne à
consulter:

Mr. J.D. Raichura
Public Trustee
7th Floor
405 Broadway Avenue
Winnipeg, Manitoba
R3C 3L6

944-2703

Résumé:

Le curateur n'agit pas au nom d'enfants
dans les questions de garde ou de
soutien.

Toutes les questions relatives au droit de la famille:

Ms. Robyn Moglove Diamond
Head, Family Law Unit
Civil Litigation Branch
Department of the Attorney General
6th Floor
405 Broadway
Winnipeg, Manitoba
R3C 3L6

944-2841

Accords internationaux de réciprocité:

Extrait de la Manitoba Regulation 100/82
(22 mai, THE MANITOBA GAZETTE Vol.111, No.21)

1. The states hereinafter named are declared to be reciprocating states for the purposes of The Reciprocal Enforcement of Maintenance Orders Act, namely:

A. In Africa:

Republic of Ghana;
Republic of Zimbabwe;

B. In Asia:

Republic of Singapore;

C. In Australia and Polynesia:

Commonwealth of Australia;
Dominion of New Zealand;
Fiji;
Territory of Papua and New Guinea;

D. In Canada:

Province of Alberta;
Province of British Columbia;
Province of New Brunswick;
Province of Newfoundland;
Province of Nova Scotia;
Province of Ontario;
Province of Prince Edward Island;
Province of Quebec;
Province of Saskatchewan;
Northwest Territories;
Yukon Territory;

E. In Central America and West Indies:

Barbados;

F. In Europe:

England and Northern Ireland;
Islands of Guernsey, Alderney and Sark;
State of Jersey;
The Isle of Man;
Norway;
Scotland;
West Germany;

F. In the United States of America:

State of Alaska;
State of Arizona;
State of Arkansas;
State of California;
State of Colorado;
State of Connecticut;
State of Delaware;

State of Georgia;
State of Idaho;
State of Illinois;
State of Indiana;
Commonwealth of Kentucky;
State of Louisiana;
State of Maine;
State of Maryland;
Commonwealth of Massachusetts;
State of Michigan;
State of Minnesota;
State of Montana;
State of Nebraska;
State of Nevada;
State of New Hampshire;
State of New Jersey;
State of New Mexico;
State of New York;
State of North Carolina;
State of North Dakota;
State of Oklahoma;
State of Oregon;
Commonwealth of Pennsylvania;
State of Rhode Island and Providence Plantations;
State of South Dakota;
State of Tennessee;
State of Texas;
State of Utah;
State of Vermont;
Commonwealth of Virginia;
State of Washington;
State of Wisconsin;
State of Wyoming.

2. Manitoba Regulation 254/80 is repealed.
3. This Regulation is effective on, from and after the date of the day it is filed with the Registrar of Regulations (May 10, 1982).

CHAPTIRE 6: ONTARIO

Exécution réciproque des ordonnances de soutien:

Loi pertinente: Reciprocal Enforcement of Maintenance Orders Act, 1982

Personne à consulter: Mrs. Joan Tilley
Reciprocity Office Administrator
Crown Law Office - Civil Law
Ministry of the Attorney General
17th Floor
18 King Street East
Toronto, Ontario
M5C 1C5

Résumé: Le Procureur général de l'Ontario ne fournit pas les services d'un avocat pour l'exécution des ordonnances étrangères de soutien. Celles-ci sont habituellement exécutées au moyen d'une audience de justification, après que le débiteur ait fait défaut de remplir ses obligations.

Il existe différents mécanismes d'exécution dont la saisie-exécution, la saisie-arrêt, la saisie sur salaire, l'interrogatoire du débiteur, la sanction pour outrage au tribunal et l'incarcération. La saisie sur salaire est le mécanisme le plus efficace et elle devrait être demandée expressément par le plaignant ou la plaignante dans la requête visant à l'exécution.

Tribunaux, greffiers ou conseillers auprès du tribunal:

Les ordonnances présentées en vertu de la Loi sur l'exécution réciproque des ordonnances de soutien sont classifiées par le bureau de la réciprocité et acheminées vers les tribunaux compétents. Sauf demande à l'effet contraire, les ordonnances sont toujours envoyées à l'un des cinquante-cinq Tribunaux de la famille de l'Ontario.

Le tribunal informe alors le tribunal d'origine sur l'adresse à utiliser pour toute correspondance future et sur le soutien disponible.

Exécution des ordonnances étrangères de garde:

Lois pertinentes: Children's Law Reform Act
Loi sur le divorce
Convention de La Haye

Agent d'exécution: Avocat de pratique privée

Résumé: Le ministère du Procureur général de l'Ontario ne fournit pas d'avocat pour l'exécution des ordonnances de garde rendues en vertu de ces lois. En Ontario, les réclamants doivent engager leur propre avocat.

Bien que la province ait des responsabilités quant au traitement des ordonnances en vertu de la Convention de La Haye, les limites de son mandat ne sont pas encore bien définies. On ne sait pas encore si les ordonnances des autres provinces pourront être présentées en vertu de la Convention de La Haye.

Service de recherche:

Il existe un service officiel de recherche ayant recours aux registres des permis de conduire et aux services du ministère des Services communautaires et sociaux.

Aucun critère n'est fixé pour l'utilisation du service, mais les demandes provenant de l'extérieur de l'Ontario ne seront probablement pas prises en considération si la réciprocité de traitement n'est pas garantie aux demandes ontariennes dans la juridiction d'où elles émanent.

La législation ontarienne dispose qu'une ordonnance judiciaire peut contraindre une personne ou un organisme à révéler des renseignements sur l'adresse de l'intimé. (Family Law Reform Act, article 26; Children's Law Reform Act, article 40).

Ordonnances intraprovinciales de soutien:

Loi pertinente: Family Law Reform Act

Agent d'exécution: Avocat de pratique privée

Résumé: Le Procureur général de l'Ontario ne fournit pas d'avocat pour l'exécution des ordonnances intraprovinciales de soutien.

Ordonnances intraprovinciales de garde d'enfant:

Lois pertinentes: Children's Law Reform Act
Loi sur le divorce

Agent d'exécution: Avocat de pratique privée

Résumé: Le Procureur général de l'Ontario ne fournit pas d'avocat pour l'exécution des ordonnances intraprovinciales de garde d'enfant.

Aide juridique:

Le régime ontarien d'aide juridique est offert à tous les résidents de l'Ontario et aux non-résidents qui répondent aux conditions d'admissibilité.

Protection de l'enfance:

Loi pertinentes: Child Welfare Act

Agent d'exécution: Ministère des Services communautaires et sociaux.

Pour tout renseignement sur la compétence et les procédures, prière de s'adresser à:

Associate Deputy Minister
Children's and Adult's Policy
and Program Development Division
Ministry of Community and Social
Services
6th Floor, Hepburn Block
Queen's Park, Toronto
M7A 1E9

Résumé: Le Procureur général de l'Ontario ne fournit pas les services d'un avocat dans les affaires civiles de ce type. C'est habituellement le ministère des Services communautaires et sociaux, ou des organismes connexes, qui le font.

Tuteur officiel:

Lois pertinentes: Judicature Act
Child Welfare Act
Surrogate Courts Act
Supreme Court Rules with respect to
divorce proceedings.

Personne à
consulter:

Office of the Official Guardian
6th Floor
180 Dundas Street West
Toronto, Ontario
M5G 1Z8

Résumé:

Le tuteur officiel peut être compétent en vertu de différentes lois. En outre, il peut agir dans toute question si le juge le lui ordonne.

Dans toute action en divorce ayant des répercussions sur des enfants, le tuteur officiel doit enquêter et déposer un rapport auprès du tribunal.

En général, le tuteur officiel n'intervient pas dans les questions de garde ou de soutien.

Toutes les questions relatives au droit de la famille:

Le Procureur général de l'Ontario n'offre pas les services d'avocats pour les actions en droit de la famille ou pour l'exécution d'ordonnances à ce sujet.

Pour tout renseignement sur les lignes de conduite en matière de droit de la famille en Ontario, prière de s'adresser à:

Mr. Craig Perkins ou Mr. Allan Shipley
Ministry of the Attorney General
15th Floor
18 King Street East
Toronto, Ontario
M5C 1C5

Accords internationaux de réciprocité:

Extrait de l'Ontario Regulation 893:

1. The states named in the Schedule are declared to be reciprocating states for the purposes of the Act.
R.R.O. 1970, Reg. 771.s.1.

Schedule

1. The following Provinces and Territories of Canada:
 - i. Alberta

- ii. British Columbia
- iii. Manitoba
- iv. New Brunswick
- v. Newfoundland
- vi. Northwest Territories
- vii. Nova Scotia
- viii. Prince Edward Island
- ix. Quebec
- x. Saskatchewan
- xi. Yukon

2. The following States of the United States of America:

- i. Arkansas
- ii. Arizona
- iii. California
- iv. Colorado
- v. Delaware
- vi. Georgia
- vii. Louisiana
- viii. Maryland
- ix. Massachusetts
- x. Michigan
- xi. Minnesota
- xii. Montana
- xiii. Nebraska
- xiv. New Mexico
- xv. Nevada

- xvi. New York
- xvii. North Dakota
- xviii. North Carolina
- xix. Ohio
- xx. Oregon
- xxi. Pennsylvanie
- xxii. South Dakota
- xxiii. Texas
- xxiv. Virginia
- xxv. Washington
- xxvi. Wisconsin

3. The following States and Territories of Australia:

- i. Capital Territory of Australia
 - ii. New South Wales
 - iii. Northern Territory of Australia
 - iv. Queensland
 - v. South Australia
 - vi. Tasmania
 - vii. Victoria
 - viii. Western Australia
4. Fiji.
5. Gibraltar.
6. Guernsey, Alderney and Sark.
7. Isle of Man.
8. Malta and its Dependencies.
9. New Zealand and the Cook Islands.

10. Papua and New Guines.
11. Republic of Ghana.
12. Southern Rhodesia (Zimbabwe).
13. States of Jersey.
14. Union of South Africa.
15. United Kingdom.

R.R.O. 1970, Reg. 771, Sched; O. Reg. 504/72, s. 1;
1250. Reg. 315/73, s. 1; O. Reg. 705/74, s. 1; O. Reg. 29/75, s. 1: 9. Reg.
922/75, s. 1: O. Reg. 125/76, s. 1:
O. Reg. 126/77, s. 1; O. Reg. 433/77, s. 1. O. Reg
820/77, s. 1; O. Reg. 933/77, s. 1; O. Reg. 146/78, s. 1;
O. Reg. 209/78, s. 1; O. Reg. 441/78, s. 1;
O. Reg. 120/79, s. 1; O. Reg. 250/79, s. 1; O. Reg. 287/79,
s. 1; O. Reg. 839/79, s. 1: O. Reg. 109/80, s. 1;
O. Reg. 174/80, s. 1; O. Reg. 324/80, s. 1; O. Reg.
473/80 s. 1; O. Reg. 378/80, s. 1; O. Reg. 726/80, s. 1;
O. Reg. 1115/80, s. 1.

CHAPITRE 7: QUÉBEC

Exécution réciproque des ordonnances de soutien:

Lois pertinentes: Loi sur l'exécution réciproque des ordonnances alimentaires (L.R.Q., c. E-19; L.Q., 1982, c.32, art. 81 à 87)

Loi pour favoriser la perception des pensions alimentaires (L.Q. 1980, c.21)

Loi sur le divorce (S.R.C. 1970, c. D-8, art. 14 et 15).

Loi assurant l'application de l'entente sur l'entraide judiciaire entre la France et le Québec (L.R.Q., c. A-20.1, titre VII).

Agent d'exécution: Les percepteurs qui travaillent au ministère de la Justice et qui sont rattachés au bureau du protonotaire de la Cour supérieure dans chacun des districts judiciaires. Ces agents, dans le district où le jugement a été déposé ou enregistré, peuvent agir en qualité de créanciers saisissants.

Personne à consulter:

Me Alice Mercier
Direction générale des affaires civiles et pénales
1200, route de l'Eglise
Sainte-Foy (Québec)
G1V 4M1

7(418)643-1441

Résumé:

A la demande d'un tribunal homologue, le percepteur du district de dépôt ou d'enregistrement du jugement se charge de recouvrer l'allocation de soutien, sans frais pour le créancier. Le percepteur agit en qualité de créancier saisissant pour le créancier du jugement et il peut opérer une saisie-arrêt continue (art. 641.1 du Code de procédure civile). Il peut aussi faire saisir tous les autres meubles (art. 659.1 du Code de procédure civile) ou immeubles (art. 661.1 du Code de procédure civile). Les frais d'exécution sont à la charge du débiteur.

TRIBUNAUX ET GREFFIERS

DISTRICT	TRIBUNAL	Protonotaires de la Cour supérieure et greffiers des divorces
1) Abitibi	a) 891, 3e Rue ouest Amos, J9T 2T4 Tél. (819) 732-6577	Simon Marcotte Jean Grenier (adj.)
	b) Edifice Gemmec 329, 3e Rue Chibougamau, G8P 1N4 Tél. (418) 748-6411	Julien Lapointe (adj.) Denise Plourde (adj.)
	c) 900, 7e Rue Val-D'Or, J9P 3P8 Tél. (819) 825-6462	Louis-Marie Chabot
2) Arthabaska	800, boul. Bois-Francis Arthabaska, G6P 5W5 Tél. (819) 357-2054	Me Pierre Sanche Nicole S. Pothier (adj.)
3) Beauce	795, ave. du Palais St-Joseph de Beauce G0S 2V0 Tél. (418) 397-5251	Me J.-Claude Morin Me André Gagné (adj.)
4) Beauharnois	180, Salaberry Valleyfield, J6T 2J2 Tél. (514) 373-3244	Me Paul Brodeur
5) Bedford	a) 920, rue Principale Cowansville, J2K 1K2 Tél. (514) 263-3520	P.E. Bélisle Francine Nadeau (adj.)
	b) 77, rue Principale Granby, J2G 9B3 Tél. (514) 372-6635	Aimé Beaudry
6) Bonaventure	Rue Principale, C.P. 517 New-Carlisle, G0C 1Z0 Tél. (418) 752-3376	Me Jean-Louis Langlois
7) Chicoutimi	202, Jacques-Cartier est C.P. 370 Chicoutimi, G7H 5C5 Tél. (418) 543-4411	Me André-Gaétan Corneau (418) 543-2455 Gabrielle L'Espérance (adj.)

TRIBUNAUX ET GREFFIERS

DISTRICT	TRIBUNAL	Protonotaires de la Cour supérieure et greffiers des divorces
8) Drummond	1680, boul. St-Joseph Drummondville, J2C 2G3 Tél. (819) 478-2513	Jacques Villeneuve
9) Frontenac	693, St-Alphonse ouest C.P. 579 Thetford Mines, G6G 5T6 Tél. (418) 338-2118	Gilles E. Pelletier
10) Gaspé	a) rue Principale C.P. 188 Percé, G0C 2L0 Tél. (418) 782-2055	Jean Bourget
	b) Havre-Aubert Iles-de-la-Madeleine G0B 1J0 Tél. (418) 937-2202	Laurent Cormier (adj.)
11) Hauterive	71, Mance Baie-Comeau, G4Z 1N2 Tél. (418) 296-5534	Me Yvon Corriveau Claude Rostan (adj.)
12) Hull	17, Laurier Hull, J8X 4C1 Tél. (819) 771-3296	Roger Rozon Gérard Lacroix (adj.)
13) Iberville	109, St-Charles Saint-Jean, J3B 2C2 Tél. (514) 347-3715	André Beauchamp
14) Joliette	450, St-Louis Joliette, J6E 2Y9 Tél. (514) 756-0544	Me Daniel Larivière Me Michel Boudrias (adj.)
15) Kamouraska	33, De la Cour Rivière-du-Loup, G5R 1J1 Tél. (418) 862-3579	Ubald Savard
16) Labelle	645, De la Madone C.P. 116 Mont-Laurier, J9L 3G9 Tél. (819) 623-2333	Raymond Fortier

TRIBUNAUX ET GREFFIERS

DISTRICT	TRIBUNAL	Protonotaires de la Cour supérieure et greffiers des divorces
17) Laval	1750, boul. de la Concorde Laval, H7G 2E7 Tél. (514) 663-7123	N/A
18) Longueuil	201, Place Charles-Le- moine Longueuil, J4K 2T5 Tél. (514) 670-6163	N/A
19) Mingan	425, boul. Laure Sept-Iles, G4R 1X6 Tél. (418) 962-2154	L.-Armand Vigneault
20) Montmagny	25, Palais de justice Montmagny, G5V 1P6 Tél. (418) 248-0909	Gilles Lamontagne
21) Montréal	1, Notre-Dame est Montréal, H2Y 1B6 Tél. (514) 873-3360	Me Jacques A. Dufour (514) 873-6331 Michel Côté (adj.)
22) Pontiac	159, John Campbell's Bay, J0X 1K0 Tél. (819) 648-5577	Protonotaire (vacant) Ella Romain (adj.)
23) Québec	12, St-Louis Québec, G1R 4P6 Tél. (418) 643-4046	Me Serge Carrier (418) 643-5398 Me Pierre Côté (418) 643-7914
24) Richelieu	46, Charlotte Sorel, J3P 1G3 Tél. (514) 742-2786	André Ménard L.-Robert Papillon (adj.)
25) Rimouski	183, De la Cathédrale C.P. 800 Rimouski, G5L 5J1 Tél. (418) 722-3531	Raymond Gallant Ghislain Boulanger (418) 723-2441
26) Roberval	a) 750, boul. St-Joseph Roberval, G8H 2L5 Tél. (418) 275-3666	Lucile Brassard Gérald Taillon (adj.)

TRIBUNAUX ET GREFFIERS

DISTRICT	TRIBUNAL	Protonotaires de la Cour supérieure et greffiers des divorces
	b) 725, Harvey ouest Suite R-C. 31 Alma, G8B 1P5 Tél. (418) 668-3334	Marcel Fortin Germain Naud (adj.)
27) Rouyn-Noranda	2, avenue du Palais Rouyn, J9X 2N9 Tél. (819) 764-6709	Nelson McLean
28) Saguenay	30, chemin de la Vallée La Malbaie, G0T 1J0 Tél. (418) 665-3991	Me Pierre Gaudreault Jacqueline Gaudreault
29) St-François	191, rue du Palais Sherbrooke, J1H 4R1 Tél. (819) 562-4784	Gérard Bessette Me Benoît Bachand
30) St-Hyacinthe	1550, Dessaulles St-Hyacinthe, J2S 2S8 Tél. (514) 773-8471	Michel Laroche (514) 774-3609 Alain Larocque
31) St-Maurice	a) 791, 5e Rue Shawinigan, G9N 6V6 Tél. (819) 536-2571	Michel-Noël Tremblay Simon Laliberté
	b) 556, rue Commerciale C.P. 7 La Tuque, G9X 3P1 Tél. (819) 523-9533	Lionel Fortin
32) Témiscamingue	8, St-Gabriel Nord Ville-Marie, J0Z 3W0 Tél. (819) 629-2773	Guy Chénier
33) Terrebonne	400, Laviolette St-Jérôme, J7Y 2T6 Tél. (514) 436-7721	Claude Boucher Jean Lemieux
34) Trois-Rivières	250, Laviolette Trois-Rivières, G9A 5H2 Tél. (819) 375-9668	Me Paul-Emile Marchand Me Daniel Kimpton

CONSEILLERS AUPRÈS DE LA DIVISION DE LA FAMILLE

DISTRICTS	CONSEILLERS
<ul style="list-style-type: none">. Arthabaska. Drummond. St-Maurice. Trois-Rivières	Réal Charland C.P. 1330 3675, Chanoine Moreau Trois-Rivières, G9A 5L2 Tél. (819) 373-3131
<ul style="list-style-type: none">. Abitibi. Rouyn-Noranda. Témiscamingue	Armande St-Arnaud 282, 1ère Avenue est Amos, J9T 1H3 Tél. (819) 732-3244
<ul style="list-style-type: none">. Beauce. Kamouraska. Frontenac. Montmagny. Québec. Saguenay	Pierrette Brisson-Amyot 39, rue St-Louis Chambre 200 Québec, G1R 3Z2 Tél. (418) 643-8315
<ul style="list-style-type: none">. Hauterive. Mingan	Gabriel Hébert 768, rue Bossé Hauterive, G5C 1L6 Tél. (418) 589-2013
<ul style="list-style-type: none">. Gaspé. Bonaventure	Jean-Guy Audet C.P. 308 Bonaventure, G0C 1R0 Tél. (418) 534-2272
<ul style="list-style-type: none">. Rimouski	Guy Bélanger 103, rue Evêché est Rimouski, G5L 4H4 Tél. (418) 723-1250
<ul style="list-style-type: none">. Abitibi (Chibougamau). Chicoutimi. Roberval	Fernand Tremblay 711, Jacques-Cartier Chicoutimi, G7H 5B7 Tél. (418) 549-4853
<ul style="list-style-type: none">. Montréal	Ulysse Desrosiers 1, rue Notre-Dame est Chambre 12.90 Montréal, H2Y 1B6 Tél. (514) 873-5868

CONSEILLERS AUPRÈS DE LA DIVISION DE LA FAMILLE

DISTRICTS	CONSEILLERS
<ul style="list-style-type: none">. Hull. Labelle. Pontiac	Germain Vézina 105, boul. Sacré-Coeur Hull, J8X 3Y5 Tél. (819) 771-6631
<ul style="list-style-type: none">. Bedford. Richelieu. St-Hyacinthe. Iberville. Beauharnois	Lucien Lavalère 201, Place Charles-Lemoyne Longueuil, J4K 9Z9 Tél. (514) 651-1700
<ul style="list-style-type: none">. Joliette. Terrebonne	Centre des services sociaux Laurentide-Lanaudière 212, boul. Labelle Ste-Thérèse, J7E 4J2 Tél. (514) 430-6900
<ul style="list-style-type: none">. St-François	Marcel Bonneau 30, 13e Avenue nord Sherbrooke, J1E 2X5 Tél. (819) 564-7265

Exécution des ordonnances étrangères de garde d'enfant:

Lois pertinentes Loi sur le divorce (S.R.C. 1970, c. D-8, art. 14 et 15).

Loi assurant l'application de l'entente sur l'entraide judiciaire entre la France et le Québec (L.R.Q., c. A-20.1, Titres IV (art. 2) et VII).

Pour l'application de la Loi sur la protection de la jeunesse (L.R.Q., c. P.34.1): l'article 131 de cette dernière permet de rendre exécutoires au Québec les décisions étrangères en matière de garde d'enfants.

Agent d'exécution: Un avocat de pratique privée, aidé par l'autorité centrale du Québec (Me Alice Mercier, Direction générale des affaires civiles et pénales, 1200, route de l'Eglise, Sainte-Foy (Québec) GIV 4MI, tél. (418) 653-1441) (Si la décision étrangère provient d'un tribunal français).

Résumé: Le Québec n'a pas de cadre législatif comme la Loi uniforme sur l'exécution des ordonnances extraprovinciales de garde, ce qui faciliterait l'exécution des décisions étrangères. En outre, lorsque ces ordonnances sont exécutoires au Québec, les parties n'ont pas de service d'exécution à leur disposition comme c'est le cas pour les ordonnances de soutien. Elles doivent donc engager leur propre avocat pour faire exécuter ces ordonnances de garde par le biais des procédures d'habeas corpus (articles 851 à 861 du Code de procédure civile).

Service de recherche:

Il n'existe actuellement aucun service permettant de retrouver les parties dans le cadre d'une ordonnance de garde. Cependant, depuis deux ans environ, nous fournissons un service visant à retrouver les débiteurs d'ordonnances de soutien; il s'agit du service d'enquêtes du ministère de la Justice, 1200, route de l'Eglise, 6e étage, Sainte-Foy (Québec), GIV 4MI, tél: (418) 643-4209.

Ordonnances intraprovinciales de soutien:

Loi pertinente: Loi pour favoriser la perception des pensions alimentaires (L.Q., 1980, c. 21).

Agent d'exécution: Les percepteurs qui sont rattachés au bureau du protonotaire de la Cour supérieure dans chaque district judiciaire.

Résumé: En cas de défaut du débiteur de payer les sommes dues en vertu d'un jugement (rendu conformément au Code civil du Bas-Canada (anciens articles 200, 212, 213), au Code civil du Québec (nouveaux articles 534, 636, 1637), au Code de procédure civile (nouvel article 817) ou à la Loi sur le divorce (articles 10, 11, 12), la personne qui détient une créance de soutien peut demander, sans frais, à un agent de recouvrement des pensions alimentaires (dans le district où le jugement a été rendu ou dans celui où elle réside) qu'il l'aide à recouvrer sa créance. En sa qualité de créancier saisissant (art. 659.3, al. 1 du Code de procédure civile), le percepteur du district où le jugement a été rendu oblige le débiteur à s'exécuter, d'après le ou les modes de saisie qu'il juge approprié(s). Les frais de l'exécution forcée sont à la charge du débiteur.

Ordonnances intraprovinciales de garde d'enfant:

Loi pertinente: Le Code de procédure civile (L.R.Q., c. C-25; article 851 à 861).

Agent d'exécution: Un avocat de pratique privée.

Résumé: Au Québec, le ministère de la Justice n'intervient pas dans l'exécution des ordonnances intraprovinciales de garde. Toutefois, un résident du Québec peut agir par voie de recours en habeas corpus pour obtenir la garde de son enfant et ce, à l'encontre de la personne qui viole l'ordonnance de garde rendue, en vertu du Code civil du Bas Canada (anciens articles 200, 212, 213), du Code civil du Québec (nouvel article 817) et de la Loi sur le divorce (articles 10, 11, 12).

Aide juridique:

a) Pour les non-résidents du Québec

En vertu de l'article 82 du règlement d'application de la Loi sur l'aide juridique (L.R.Q., 1981, c. A-14, r. 1), l'aide juridique peut être accordée à des personnes résidant à l'extérieur de la province si le gouvernement de leur domicile ou de leur résidence principale accorde de l'aide juridique aux résidents du Québec.

b) Services offerts en matière civile

Il s'agit de tout avantage accordé en vertu de la loi à une personne économiquement défavorisée, ayant pour objet de lui faciliter l'accès aux tribunaux, aux services professionnels d'un avocat ou d'un notaire et à l'information nécessaire sur ses droits et ses obligations. Ces services peuvent être accordés à toute étape de l'action, devant la cour de première instance ou en appel, devant n'importe quel tribunal ou dans toute cause, contentieuse ou non; l'aide s'étend aux procédures d'exécution (Loi sur l'aide juridique, L.R.Q., c. A-14, art. 10).

c) Admissibilité en fonction des ressources

Critère des "ressources": toute personne qui n'a pas les moyens pécuniaires suffisants pour exercer un droit, obtenir un conseil juridique ou retenir les services d'un avocat ou d'un notaire sans se priver des moyens nécessaires de subsistance (Loi sur l'aide juridique, L.R.Q., c. A-14, art. 2) et dont le salaire hebdomadaire brut n'est pas supérieur à la norme prescrite par voie de règlement ((1981) 113. G.O. 11, 5555), a droit à recevoir de l'aide juridique.

Cependant, dans les cas auxquels s'applique un accord de réciprocité interprovincial, l'admissibilité en fonction des ressources est déterminée dans la province de résidence du demandeur, en vertu des critères qui sont en vigueur dans ladite province. Jusqu'à présent, toutes les provinces et tous les territoires du Canada ont conclu des accords en ce sens avec le Québec.

d) Liberté de choix

Le service d'aide juridique est essentiellement caractérisé par la liberté de choix qu'il offre au bénéficiaire, celui-ci pouvant engager un avocat travaillant à plein temps pour l'aide juridique ou un

avocat de pratique privée dont les services seront payés par le réseau de l'aide juridique (Règlement d'application de la Loi sur l'aide juridique, L.R.Q., 1981, c. A-14, r.1, art. 76).

Personne à consulter:

Me Jacques Valade
Commission des services juridiques
2, Complexe Desjardins
Tour de l'est, 14e étage
Montréal (Québec)
H5B 1B3

(514) 873-3562

Protection de l'enfance:

Loi pertinente: Loi sur la protection de la jeunesse, L.R.Q., c. P-34.1.

Agent d'exécution: De nombreux services et plusieurs personnes interviennent, à différentes étapes, dans les affaires de protection de l'enfance. Tout d'abord, le "Comité de la protection de la jeunesse" est responsable auprès du ministère de la Justice. Il y a aussi des directeurs de la protection de la jeunesse, qui relèvent du ministère des Affaires sociales et sont nommés dans tous les centres de service social. Enfin, la loi a créé un Tribunal de la jeunesse, compétent pour tout le contentieux de protection de la jeunesse.

Personne à consulter:

Mme Micheline Leduc
Comité de la protection de la jeunesse
Ministère de la Justice
505, boulevard Dorchester ouest
14ième étage
Montréal (Québec)
H2Z 1A8

(800) 361-8854

M. Paul Lavigueur
Ministère des Affaires sociales
6161, rue St-Denis, pièce 6
Montréal (Québec)
H2S 2R5

(514) 873-8144

Résumé: Les principales fonctions du "Comité de la protection de la jeunesse" consistent:

- a) à offrir des mesures de protection à l'enfant dont la sécurité ou le développement sont menacés (article 23 a)); et
- b) à protéger les droits de l'enfant qui sont reconnus en vertu de la loi (art. 23 b)).

Le directeur de la protection de la jeunesse a pour obligation de prendre en charge l'enfant dont la sécurité ou le développement sont menacés ou à qui un acte contrevenant à la loi ou aux règlements en vigueur au Québec est reproché. Dès que le directeur est saisi de la situation d'un enfant, il fait une évaluation sommaire pour voir s'il est nécessaire d'agir immédiatement ou non. S'il juge que l'enfant est menacé dans sa sécurité et dans son développement, il décidera à qui l'enfant devra être confié. Dans certains cas, la décision sur ce dernier point reviendra conjointement au directeur et à une personne désignée par le ministère de la Justice.

Curateur public ou tuteur officiel:

Loi pertinente: Loi sur la protection de la jeunesse,
L.R.Q., C. P.34.1

Autorités
d'exécution: Les directeurs de la protection de la
jeunesse.

Personne à consulter:

M. Paul Lavigueur
Ministère des Affaires sociales
6161, rue St-Denis, pièce 6
Montréal (Québec)
H2S 2R5 (514) 873-8144

Résumé: Un directeur peut présenter à la Cour
supérieure une requête afin d'être nommé
tuteur d'un enfant:

- a) lorsque ce dernier est sous le coup
d'une ordonnance du Tribunal de la
jeunesse et qu'il est apparemment

impossible de lui permettre de retourner chez ses parents sous peine de l'exposer à un danger;

- b) lorsque l'enfant est abandonné ou oublié, ou s'il est orphelin, ou encore si ses parents ne remplissent pas les obligations de soin, d'entretien et d'éducation qui leur incombent pour l'enfant alors que ce dernier vit dans un foyer nourricier.

Lorsque la Cour supérieure dépouille le père et la mère de toute autorité parentale, le directeur devient tuteur d'office de l'enfant, si l'enfant n'a pas déjà un tuteur nommé conformément au Code civil (art. 249 et ss.). Lorsque la Cour supérieure déclare que le père et la mère sont partiellement dépouillés de toute autorité parentale, elle peut alors nommer le directeur comme tuteur de l'enfant, si cet enfant n'a pas déjà un tuteur nommé en vertu du Code civil.

Toutes les questions relatives au droit de la famille:

Madame Marie-Josée Longtin
Directrice de la législation ministérielle
1200, route de l'Eglise, 4e étage
Sainte-Foy (Québec)
GIV 4M1

(418) 643-7222

Accords internationaux de réciprocité:

Toutes les provinces et les territoires du Canada;
La France.

CHAPITRE 8: NOUVEAU-BRUNSWICK

Exécution réciproque des ordonnances de soutien:

Lois pertinentes: Loi sur l'exécution réciproque des ordonnances de soutien (attribution de compétence)

Règle sur le divorce (règle 72, Règles de pratique, 1982) ou

Loi sur les services à l'enfant et à la famille et sur les relations familiales (droit substantif).

Agent d'exécution: Bureau du Procureur général
Casier Postal 6000
Fredericton, N.B.
E3B 5H1

Personne à consulter: M.A.M. Di Giacinto
Assistant registraire
Bureau du registraire
Pièce 202, Edifice de la Justice
Casier Postal 6000
Fredericton, N.B.
E3B 5H1

(506) 453-2508

Résumé: Le bureau du Procureur général fournit les services de substituts de la Couronne et ce de façon gratuite, pour l'auteur de la requête en obtention d'une ordonnance provisoire ou en exécution d'une ordonnance définitive.

L'intimé peut recevoir de l'aide juridique auprès du Tribunal de la famille à juridiction intégrale, à Fredericton. L'aide juridique civile a été mise en oeuvre et elle prévoit que l'intimé soit représenté par un avocat s'il remplit certains critères.

Les recours diffèrent légèrement en fonction des procédures fédérales et provinciales mais les possibilités d'audiences de justification, de saisies-arêts, d'ordonnances frappant les biens et d'emprisonnement pour outrage au tribunal, constituent des points communs.

Tribunaux et greffes:

- 1) A.M. DiGiacinto
Assistant registraire
Bureau du registraire
Pièce 202 - Edifice de la Justice (Bureau principal)
Casier postal 6000
Fredericton, N.B.
- 2) M. Gary W. Demmings
Agent des services administratifs
Cour provinciale, Division de la famille
Casier postal 5001
Moncton, Nouveau-Brunswick
E2A 3Z9
- 3) M. André Lepine
Directeur
Cour provinciale, Division de la famille
Casier postal 5001
Bathurst, Nouveau-Brunswick
E2A 3Z9
- 4) Madame Catherine Wilson
Agent d'exécution
Cour provinciale, Division de la famille
Casier postal 6398, Station "A"
Saint John, Nouveau-Brunswick
E2L 4R8
- 5) M. Robert I. Ross
Conseiller
Cour provinciale, Division de la famille
454 King George Highway
Newcastle, Nouveau-Brunswick
E1V 1M1
- 6) Mlle M.C. Cameron
Sténographe judiciaire
Casier postal 1329
Woodstock, Nouveau-Brunswick
E0J 2B0
- 7) M. Marcel Pelletier
Cour provinciale, Division de la famille
Casier postal 5001
Edmundston, Nouveau-Brunswick
E3V 1J9

- 8) Madame Ida MacDonald
Division de la famille
Cour provinciale
Edifice City Centre
157 rue Water - Pièce 309
Campbellton, Nouveau-Brunswick
E3N 3H5
- 9) Mlle Janet McIntosh
Administrateur, Cour familiale
Casier postal 6000
Fredericton, Nouveau-Brunswick
E3B 5H1
- 10) Cour provinciale, Division de la famille
Casier postal 806
Tracadie, Nouveau-Brunswick
E0C 2B0

Conseillers auprès du Tribunal de la famille:

Service de Counselling
Cour provinciale, Division
de la famille
Cour du Banc de la reine,
Division de la famille
Province du Nouveau-Brunswick

Veuillez également consulter la liste suivante des noms et
adresses des conseillers (mars 1982).

<u>NAME/NOM</u>	<u>OFFICE/BUREAU</u>	<u>RESIDENCE</u>	<u>SATELLITE OFFICE(S)</u> <u>BUREAU(X) SATELLITE(S)</u>
Ronald Eric Bagnell	Court of Queen's Bench Family Division Room 207 Justice Bldg. Queen Street Fredericton, New Brunswick E3B 5H1 Telephone: 453-2015 453-2990 Secretary: Judy Gregory	Beaverdam R.R. #5 Fredericton, New Brunswick Telephone: 455-6932 (Party Line)	Provincial Court Drummond Drive School Oromocto, N.B. Contact Person: Donald Kenny Court Clerk
Barbara-Ann Bourque	Cour Provinciale Division de la famille Place Assomption 3e étage C.P. 5001 770, rue Main Moncton, N.B. E1C 8R3 Tél: 858-2710 Sec.: Carol Daigle	720 Gauvin Rd Dieppe, N.B. E1A 1M1 Téléphone: 855-2575	Richibucto Court House Main Street Richibucto, N.B. Tel: 523-9883 Shediac Mall 2nd Floor Shediac, N.B. Tel: 532-4364 532-6251 Bouctouche Court House Irving Boulevard Bouctouche, N.B. Tel: 743-6392
Michael Guravich	Provincial Court Family Division Assumption Place 770 Main Street 3rd Fl, PO Box 5001 Moncton, N.B. E1C 8R3 Tel: 858-2710 Sec.: Carol Daigle	300 Ryan Rd. R.R. #7 Moncton, N.B. E1C 8X4 Tel: 384-9671	Court House Sackville, N.B.

<u>NAME/NOM</u>	<u>OFFICE/BUREAU</u>	<u>RESIDENCE</u>	<u>SATELLITE OFFICE(S)</u> <u>BUREAU(X) SATELLITE(S)</u>
André Lépine	Cour provinciale Division de la famille 3e étage Centre régional de Bathurst rue St. Patrick C.P. 5001 Bathurst, N.-B. E2A 3Z9 Tél: 548-8831 Sec: Anne-Marie Bryar	Boîte 357 Beresford N.-B. E0B 1H0 Téléphone: 783-7762	Edifice provincial, rue Principale Tracadie, N.-B. Tél: 395-2291 ou 395-2225 Sec: Lina Conolly
Maureen Michaud	Court of Queen's Bench Family Division Room 207 Justice Bldg. Queen Street Fredericton, N.B. E3B 5H1 Tel: 453-2015 453-2990 Sec: Judy Gregory	224 Brunswick St. Apt. #2 Fredericton, N.B. E3B 1G9 Telephone: 457-1047	
Marcel Pelletier	Cour provinciale Division de la famille 233 Carrefour Assomption Edmundston, N.B. E3V 1J9 Tél: 735-4795 Sec: Madame Jackie Zaichik	64, rue Leblond C.P. 51 Edmundston, N.B. Tél: 739-9287 Bureau Satellite Cour Provinciale St-Quentin, N.-B. Tél: 235-3013 235-2244	Ministère des Services Sociaux Rue Broadway, C.P. 5001 Grand-Sault, N.B. Tél: 473-1830 Ministère des Services Sociaux Kedgwick, comté de Restigouche Tél: 284-2823 Provincial Court Perth, Andover (Victoria County) Tel: 273-2861 ou 273-3839 (Sec. - Police)

<u>NAME/NOM</u>	<u>OFFICE/BUREAU</u>	<u>RESIDENCE</u>	<u>SATELLITE OFFICE(S)</u> <u>BUREAU(X) SATELLITE(S)</u>
Martina Riordon	Provincial Court Family Division P.O. Box 6398 110 Charlotte St. Saint John, N.B. E2L 2J4 Tel: 658-2400 Sec: Helen Doucet Cathy McCracken	400 Douglas Ave Apt. #304 Saint John, New Brunswick E2A 3Y5 Tel: 693-1242	Department of Social Services Main Street Sussex, N.B. Tel: 433-3053 Sec: Sally Folkins
Emile Robichaud	Cour Provinciale, Division de la famille C.P. 5001 Bathurst, N.-B. E2A 3Z9 Tél: 548-8831 Sec: Mme Anne-Marie Bryar	C.P. 291 Robertville, N.B. E0B 2K0 Tél: 783-4816	City Centre C.P. 5001 Campbellton, N.B. Tél: 759-9363 Sec: Mme Ida MacDonald
Robert I. Ross	Provincial Court Family Division 454 King George HWY. Tel: 622-0849 Sec: Deborah Ferguson	511 Manny Drive Newcastle, N.B. E1V 3S3 Tel: 622-7677	
Marie Warner	Provincial Court Family Division P.O. Box 6398 110 Charlotte St. Saint John, N.B. E1V 1M1	140 Broad St. Saint John, New Brunswick E2C 1Y8 Tel: 642-1741	Provincial Bldg. Provincial Court Family Division P.O. Box 246 41 King Street St. Stephen, N.B. E3L 2X2 Tel: 466-1700 Sec: Judy Frye
Louis J. Richard Directeur Services de Counselling à la Cour familiale	Cour provinciale Division de la famille Place Assomption 770, rue Principle 3e étage, C.P. 5001 Moncton, N.-B. E1C 8R3 Tél: 858-2710 Sec: Carol Daigle	17, avenue Bromley Moncton, N.-B. E1C 5T8 Tél: 382-4663	

Exécution des ordonnances étrangères de garde d'enfant:

Loi pertinente: La Loi sur les services à l'enfant et à la famille et sur les relations familiales

Agent d'exécution: Le bureau du Procureur général, par l'intermédiaire des substituts de la Couronne.

Résumé: Les articles 130.2 à 130.6 de la Loi sur les services à l'enfant et à la famille et sur les relations familiales prévoient la procédure d'exécution des ordonnances extraprovinciales de garde. Il est conseillé d'accompagner la demande d'un exemplaire certifié conforme de l'ordonnance et d'une déclaration sur l'honneur signée par le parent à qui la garde est confiée.

Service de recherche:

Aucun organisme particulier n'est désigné à cet effet. Toutefois, l'article 122(1) permet à la cour d'ordonner à quiconque ou à tout organisme public (provincial) de fournir l'adresse se trouvant dans les registres confiés à sa garde, dans le cas d'une demande visant à obtenir une ordonnance ou à faire exécuter une ordonnance existante de garde ou de soutien, lorsque l'auteur de la requête doit s'enquérir de l'adresse de l'intimé ou la confirmer.

Ordonnances intraprovinciales de soutien:

Loi pertinente: Loi sur les services à l'enfant et à la famille et sur les relations familiales

Agent d'exécution: Le bureau du Procureur général, par l'intermédiaire des substituts de la Couronne.

Résumé: L'intimé peut décider de se faire représenter par un avocat de pratique privée ou par un avocat de service dans tous les cas, ou encore, par un avocat de l'aide juridique civile s'il remplit les critères d'éligibilité à l'aide financière.

Ordonnances intraprovinciales de garde d'enfant:

Loi pertinente: Loi sur les services à l'enfant et à la famille et sur les relations familiales

Agent d'exécution: Avocat de pratique privée.

Résumé: Le bureau du Procureur général n'intervient pas pour obtenir ou faire exécuter des ordonnances de garde applicables à des résidents du Nouveau-Brunswick.

Aide juridique:

Le Nouveau-Brunswick est doté d'un programme complet d'aide juridique civile.

Personne à
consulter: M. Edward F. McGinley
Directeur provincial
Aide Juridique
Casier postal 6000
Fredericton, N.B.
E3B 5H1

(506) 455-9976

Protection de l'enfance:

Loi pertinente: Loi sur les services à l'enfant et à la famille et sur les relations familiales.

Agent d'exécution: Ministère des Affaires sociales.

Personne à
consulter: M. Robert MacDonald
Directeur exécutif
Services sociaux à la personne,
Casier postal 6000
Fredericton, N.B.

(506) 453-2955

Résumé: Le bureau du Procureur général fournit au ministre des Affaires sociales les services de substituts pour la présentation des demandes au nom du Ministre.

Curateur public ou tuteur officiel:

Le ministère des Services sociaux agit à titre de représentant juridique de l'enfant dont il est le tuteur, conformément à la Loi sur les services à l'enfant et à la

famille et sur les relations familiales. Il peut agir également, à ce titre, pour tout autre enfant qui lui est confié (art. 4 (1)).

Dans toute action portant sur la garde de l'enfant, si le ministre n'est pas partie à l'action, le tribunal avise le ministre de la tenue de l'action, et il peut prendre toutes les mesures jugées nécessaires pour s'assurer que les intérêts et préoccupations de l'enfant soient bien représentés et ce, de façon distincte par rapport à toute autre personne. Ces mesures peuvent consister notamment en la nomination d'un avocat ou d'un porte-parole responsable pour aider à représenter les intérêts et préoccupations de l'enfant. (art. 7 a)).

Toutes les demandes doivent être adressées à:

M. Robert MacDonald
Directeur exécutif
Services sociaux à la personne
Ministère des services sociaux
Casier Postal 6000
Fredericton, N.B.
E3B 5H1

(506) 453-2955

Toutes les questions portant sur les services juridiques en droit de la famille:

M. Robert A. Murray
Directeur des poursuites publiques
Bureau du Procureur général
Casier postal 6000
Fredericton, N.B.
E3B 5H1

(506) 453-2784

Accords internationaux de réciprocité:

le 4 novembre 1982

Règlement 82 - 936

Conformément à l'article 11 de la Loi sur l'exécution réciproque des ordonnances de soutien, le lieutenant gouverneur en conseil prend l'ordonnance suivante:

1. La présente ordonnance peut être citée sous le nom d'Ordonnance sur les États donnant réciprocité - Loi sur l'exécution réciproque des ordonnances de soutien.
2. Les États donnant réciprocité sont les suivants, aux fins de l'application de la loi:

- a) Alberta
- b) Colombie-Britannique
- c) Manitoba
- d) Terre-Neuve
- e) Territoires du Nord-Ouest
- f) Nouvelle-Écosse
- g) Ontario
- h) Île-du-Prince-Édouard
- i) Québec
- j) Saskatchewan
- k) Territoire du Yukon
- l) les États et Territoires d'Australie nommés ci-après:
 - i) Nouvelles Galles du Sud
 - ii) Victoria
 - iii) Australie méridionale
 - iv) Australie occidentale
 - v) Tasmanie
 - vi) Queensland
- m) Angleterre
- n) Fidji
- o) Île de Man
- p) Nouvelle-Zélande
- q) Irlande du Nord
- r) Écosse
- s) Singapour, et
- t) les États-Unis d'Amérique nommés ci-après:

- i) Californie
- ii) Maine
- iii) Connecticut
- iv) Delaware
- v) Caroline du Nord
- vi) Orégon
- vii) Montana
- viii) Massachusetts
- ix) Maryland et
- x) New York

CHAPITRE 9: NOUVELLE-ÉCOSSE

Exécution réciproque des ordonnances de soutien:

Lois pertinentes: Maintenance Orders Enforcement Act
Divorce Act
Civil Procedure Rules

Agent d'exécution: Department of Attorney General
P.O. Box 7, 1723 Hollis Street
Halifax, Nova Scotia B3J 2L6
Tribunaux de la famille de Nouvelle-Écosse

Personnes à consulter:

R. Gerald Conrad, Q.C.
Director (Civil)
Department of Attorney General
(as above) 424-4041

Mrs. Brenda Croft
Assistant Administrator
Department of Attorney General
(as above) 424-4041

Mr. William D. Greatorex
Administrator
Family & Children's Services Division
Department of Social Services
P.O. Box 696
Halifax, N.S.
B3J 2T7 424-4279

Résumé: À la demande d'une instance homologue, le Procureur général veillera à l'exécution des ordonnances de soutien étrangères, par l'intermédiaire des Tribunaux de la famille.

L'exécution des ordonnances de soutien se fait habituellement par le biais de saisies-arrêt et de saisies-exécution, conformément à la Family Maintenance Act, S.N.S. 1980, c.6.

Tribunaux et greffiers:

Région du Cap Breton, Sydney
(comtés de Victoria et du Cap Breton)

M. Peter MacDonald
Supervisor
Family Court
P.O. Box 785
Sydney, N.S.
212 631

Aux soins de: M. Lloyd Lewis
M. Terry Mosley

Région du Cap Breton, Port Hawkesbury
(comtés de Richmond et Inverness)

M. Gordon MacMaster
District Supervisor
Family Court
P.O. Box 359
Port Hawkesbury, N.S.
B0E 2V0

Aux soins de: M. Walter
MacMillan

Halifax

(Ville de Halifax et comtés d'Halifax et de Hants)

M. Jack Jackson
Supervisor
Family Court
6112 Quinpool Road
Halifax, N.S.
B3K 5H7

Aux soins de: M. Len W.
Lipsett

Dartmouth

(Ville de Dartmouth et comté d'Halifax)

M. Jack Jackson
Supervisor
Family Court
45 Alderney Drive
Dartmouth, N.S.
B2Y 4B9

Aux soins de: M. Alvin
Underhill

Région du centre

(Comtés de Lunenburg, Kings, Queens et Annapolis)

M. Vernon Totten
Casework Supervisor
Family Court
P.O. Box 816
Kentville, N.S.
B4N 4H8

Aux soins de: M. Barry J.
Lavalle
M. Perry Bishop

Région de la côte nord
(Comté de Cumberland)

M. Don Russell
District Supervisor
Family Court
P.O. Box 399
Amherst, N.S.
B4H 3Z5

Aux soins de: M. Archie St.
Peters

Région de la côte nord

(Comtés Pictou, Antigonish, Guysborough et Colchester)

M. J. T. MacIsaac
Casework Supervisor
Family Court
P.O. Box 488
New Glasgow, N.S.
B2H 5E5

Aux soins de: M. Elliott
MacKinnon
M. Norman Lord

Région de l'ouest

(Comtés de Yarmouth, Shelburne and Digby)

M. Douglas Mosley
Casework Supervisor
Family Court
P.O. Box 460
Yarmouth, N.S.
B5A 4B4

Aux soins de: M. Robert
LeBlanc

Exécution des ordonnances étrangères de garde:

Loi pertinente: Reciprocal Enforcement of Custody Orders Act, S.N.S. 1976, c.15.

Agent d'exécution: Avocat de pratique privée

Résumé: La Nouvelle-Écosse n'intervient pas dans l'exécution des ordonnances étrangères de garde d'enfant, sauf lorsque l'affaire relève des articles du Code criminel portant sur l'enlèvement d'enfants. Quiconque souhaite faire exécuter une ordonnance de garde en Nouvelle-Écosse doit engager son propre avocat.

Service de recherche:

La Nouvelle-Écosse n'a pas de service de recherche à proprement parler relativement aux ordonnances de soutien ou de garde, si ce n'est le recours habituel au bureau du shérif, pour la signification des documents.

Ordonnances intraprovinciales de soutien:

Loi pertinente: The Family Maintenance Act

Agent d'exécution: Avocat de pratique privée

Résumé: Le ministère du Procureur général de la Nouvelle-Écosse n'intervient pas pour les résidents de la province qui veulent

obtenir ou faire exécuter des ordonnances de soutien applicables à d'autres habitants de la province. Dans ce cas, les parties doivent s'adresser à leur propre avocat ou à un avocat de l'aide juridique.

Ordonnances intraprovinciales de garde d'enfant:

Lois pertinentes: The Infants Custody Act, R.S.N.S. 1967, c.145
The Family Maintenance Act
The Children Services Act, S.N.S. 1976, c.8

Agent d'exécution: Avocat de pratique privée

Résumé: Le ministère du Procureur général de la Nouvelle-Écosse n'intervient pas pour obtenir ou faire exécuter des ordonnances de garde d'enfant applicables à des habitants de la province, et ces derniers doivent engager leur propre avocat.

Protection de l'enfant:

Loi pertinente: Childrens Services Act

Autorité d'exécution: Department of Social Services
P.O. Box 696
Halifax, N.S.
B3J 2T7

Personne à consulter: Mr. William D. Creatorex
Administrator
Family and Children's Services Division
(comme ci-haut) 424-4279

Résumé: Le ministère du Procureur général ou ses préposés rémunérés à l'acte agissent au nom du ministère des Affaires sociales pour la protection de l'enfance et la Childrens Services Act ne prévoit pas l'exécution des ordonnances de tutelle de l'extérieur de la province.

Toutes les questions relatives au droit de la famille:

Ms. Alison Scott
Solicitor
Department of Attorney General
P.O. Box 7
Halifax, N.S.
B3J 2L6 424-7701

Accords internationaux de réciprocité:

Ile de Man
Nouvelles-Galles du Sud
Victoria (Australie)
Tasmanie
Ile de Guernesey
Rhodésie du sud
Territoires de la capitale australienne et du Nord
Papouasie et Nouvelle-Guinée
Australie occidentale
Singapour
Australie méridionale
Royaume-Uni
Gibraltar

Exécution réciproque des ordonnances de soutien:

Agent d'exécution: Department of Attorney General
Post Office Box 2000
Charlottetown
Prince Edward Island
C1A 7N8

J. Phillip Arbing
Department of Justice
Post Office Box 2000
Charlottetown
Prince Edward Island
C1A 7N8

Les ordonnances de soutien sont habituellement exécutées par le recours à des saisies-arrêt, des saisies-exécution, des inscriptions d'hypothèques foncières, des audiences de justification et des citations pour outrage au tribunal.

Deborah Proud
Supreme Court (Family Division)
Post Office Box 2290
42 Water Street
Charlottetown, Prince Edward Island
C1A 8C1

(902) 892-9131

Wayne Lilly
Deputy Prothonotary
Supreme Court
Court House Building
108 Central Street
Summerside, Prince Edward Island (902) 436-4217

Conseillers auprès du Tribunal de la famille

Irene Mac Innis (Mrs.)
Supervising Family Counsellor
Supreme Court (Family Division)
Post Office Box 2290
42 Water Street
Charlottetown, Prince Edward Island
C1A 8C1 (902) 892-9131

Francis P. Bulger
Family Counsellor
Supreme Court (Family Division)
Post Office Box 2290
42 Water Street
Charlottetown, Prince Edward Island
C1A 8C1 (902) 892-9131

Frank Lavandier
Family Counsellor
Supreme Court (Family Division)
Court House Building
108 Central Street
Summerside, Prince Edward Island
(902) 436-4217

Exécution des ordonnances étrangères de garde:

Lois pertinentes: Extra-Provincial Custody Order
Enforcement Act
Loi sur le divorce

Agent d'exécution: Avocat de pratique privée

Résumé: L'île-du-Prince-Édouard n'intervient pas dans l'exécution des ordonnances étrangères de garde d'enfant, sauf si la question relève des articles du Code criminel portant sur l'enlèvement d'enfant. Quiconque souhaite faire exécuter une ordonnance de garde dans l'île-du-Prince-Édouard doit engager son propre avocat.

Service de Recherche:

L'Île-du-Prince-Édouard n'a pas de service de recherche relativement à l'exécution des ordonnances de soutien ou de garde, si ce n'est le recours habituel au bureau du shérif, pour la signification des documents. Du fait de la faible étendue géographique de la province et de sa faible population, la recherche des personnes ne saurait présenter de difficultés.

Ordonnances intraprovinciales de soutien:

Loi pertinente: Family Law Reform Act

Agent d'exécution: Personnel du tribunal administratif

Résumé: Exécution d'office

Ordonnances intraprovinciales de garde d'enfant:

Lois pertinentes: Family Law Reform Act
Loi sur le divorce

Autorité
d'exécution: Avocat de pratique privée

Résumé: Le ministère du Procureur général de l'Île-du-Prince-Édouard n'intervient pas pour obtenir ou faire exécuter des ordonnances de garde relatives à des habitants de l'île et ces derniers doivent prendre leur propre avocat ou un avocat de l'aide juridique pour défendre leurs intérêts.

Aide Juridique:

Le mécanisme d'aide juridique en place fournit des avocats publics qui se chargent des questions de droit criminel et de droit de la famille.

Protection de l'Enfance:

Loi pertinente: Family and Child Services Act

Agent d'exécution: Department of Social Services
Post Office Box 2000
Charlottetown
Prince Edward Island
C1A 7N8

Personne à
consulter:

Nancy E. MacKinnon
Director of Child Welfare
Department of Social Services
Post Office Box 2000
Charlottetown
Prince Edward Island
C1A 7N8 (902) 892-5471

or

Judith M.M. Haldemann
Departmental Solicitor
Department of Justice
Post Office Box 2000
Charlottetown
Prince Edward Island
C1A 7N8 (902) 892-5411

Résumé:

Le ministère du Procureur général ou ses
préposés rémunérés à l'acte agissent, au
nom du ministère des affaires sociales,
pour la protection de l'enfance; la
Family and Child Services Act ne prévoit
rien pour l'exécution des ordonnances de
tutelle de l'extérieur de la province.

Toutes les questions relatives au droit de la famille:

M. George E. MacMillan
Prothonotary
Supreme Court of Prince Edward Island
Post Office Box 2200
Charlottetown
Prince Edward Island
C1A 8B9 (902) 892-9131

Accords internationaux de réciprocité

Toutes les provinces et les territoires du Canada
Territoires et états d'Australie
Angleterre et Irlande du Nord
Écosse
Île de Guernesey
Île de Man
Malte
Nouvelle-Zélande
Zimbabwe

CHAPITRE 11: TERRE-NEUVE

Exécution réciproque des ordonnances de soutien:

Lois pertinentes: Maintenance Orders Enforcement Act
Loi sur le divorce
Divorce Rules (Supreme Court)

Agent d'exécution: Department of Justice
Confederation Building
St. John's, Newfoundland
A1C 5T7

Personne à
consulter: Mrs. E.P. Noonan
Solicitor
Civil Division
Department of Justice
Confederation Building
St. John's, Newfoundland
A1C 5T7 (709) 737-2887

Résumé: À la demande d'une instance homologue,
le transfert de toutes les ordonnances
étrangères de soutien et des documents
d'appui aux tribunaux locaux habilités à
les faire exécuter.

L'exécution des ordonnances de soutien
se fait, à l'ordinaire, grâce au recours
à la saisie-arrêt, à la
saisie-exécution, à l'inscription d'une
hypothèque foncière (Judicature Act) et
à l'audience de justification.

Tribunaux et greffes:

Provincial Court of Newfoundland
P.O. Box 126
Clareville, Newfoundland
A0E 1J0

Provincial Court of Newfoundland
P.O. Box 2006
Corner Brook, Newfoundland
A2H 6C3

Provincial Court of Newfoundland
P.O. Box 307
Gander, Newfoundland
A1V 1N7

Provincial Court of Newfoundland
P.O. Box 217
Goose Bay, Labrador
A0P 1C0

Provincial Court of Newfoundland
Grand Bank, Newfoundland
A0E 1W0

Provincial Court of Newfoundland
Provincial Building
Grand Falls, Newfoundland
A2A 1W9

Provincial Court of Newfoundland
P.O. Box 519
Harbour Grace, Newfoundland
A0A 2M0

Provincial Court of Newfoundland
P.O. Box 149
Holyrood, Newfoundland
A0A 2R0

Provincial Court of Newfoundland
P.O. Box 369
Placentia, Newfoundland
A0B 2Y0

Provincial Court of Newfoundland
P.O. Box 940
Port-aux-Basques, Newfoundland
A0M 1C0

Provincial Court of Newfoundland
P.O. Box 68
Springdale, Newfoundland
A0J 1T0

Provincial Court of Newfoundland
P.O. Box 279
Stephenville, Newfoundland
A2N 2S4

Provincial Court of Newfoundland
P.O. Box 1060
Wabush, Labrador
A0R 1B0

Provincial Court of Newfoundland
Woody Point, Bonne Bay
Newfoundland
A0K 1P0

Unified Family Court
21 King's Bridge Road
St. John's, Newfoundland
A1C 3K4
Mrs. Carol O'Brien
Court Administrator

Supreme Court of Newfoundland
Court House
Duckworth Street
St. John's, Newfoundland
Mr. Edward Neary, Q.C.
Registrar

Conseillers auprès du Tribunal de la famille:

N'existe qu'au Tribunal de la famille
21 King's Bridge Road
St. John's, Newfoundland
A1C 3K4

Mr. Rick Morris
Ms. Kathy LeGrow
Mr. Brendan Rumsey

Exécution des ordonnances étrangères de garde:

Lois pertinentes: Extra-provincial Custody Order
 Enforcement Act
 Loi sur le divorce

Agent d'exécution: Avocat pratique privée

Résumé: Terre-Neuve n'intervient pas dans
 l'exécution des ordonnances étrangères
 de garde d'enfant, sauf si la question
 relève des articles du Code criminel
 portant sur l'enlèvement d'enfant.
 Toute personne désireuse de faire
 exécuter une ordonnance de garde
 d'enfant à Terre-Neuve doit engager son
 propre avocat.

Service de recherche:

Terre-Neuve n'est dotée d'aucune unité de recherche
relativement aux questions d'ordonnances de soutien et de
garde des enfants, si ce n'est le recours habituel au bureau
du shérif, pour la signification des documents.

Ordonnances intraprovinciales de soutien:

Lois pertinentes: The Maintenance Act
 The Children of Unmarried Parents Act

Autorité
d'exécution: Avocat de pratique privée

Résumé: Le ministère de la Justice de
Terre-Neuve n'intervient pas pour des
résidents de cette province en cherchant
à obtenir et à faire exécuter des
ordonnances de soutien où d'autres
résidents de Terre-Neuve sont en cause.
Les résidents doivent prendre leur
propre avocat ou un avocat de l'aide
juridique pour défendre leurs intérêts.

Ordonnances intraprovinciales de garde:

Loi pertinente: Loi sur le divorce

Autorité
d'exécution: Avocat de pratique privée

Résumé: A Terre-Neuve, le ministère de la
Justice ne cherche pas à obtenir ni à
exécuter des ordonnances de garde
d'enfants relatives à des résidents de
Terre-Neuve. Les résidents doivent
prendre leur propre avocat.

Aide juridique:

Newfoundland Legal Aid Commission
Centre Building
21 Church Hill
St. John's, Newfoundland
A1C 3Z1

Newfoundland Legal Aid Commission
50 Main Street
Corner Brook, Newfoundland
A2H 1C4

Newfoundland Legal Aid Commission
John Lloyd Building
Gander, Newfoundland

Newfoundland Legal Aid Commission
50 High Street
Grand Falls, Newfoundland
A2A 1C6

Newfoundland Legal Aid Commission
P.O. Box 442
Hamilton River Road
Happy Valley, Labrador
A0P 1E0

Newfoundland Legal Aid Commission
P.O. Box 474
Ville-Marie Drive
Marystown, Newfoundland
A0E 2N0

Newfoundland Legal Aid Commission
94-A Queens Street
Stephenville, Newfoundland
A2N 2M9

Protection de l'enfance:

Loi pertinente: The Child Welfare Act

Agent d'exécution: Department of Social Services
Chimo building
Crosbie Road
St. John's, Newfoundland (709)737-2668

Personne à
consulter: Mrs. E.P. Noonan
Solicitor
Department of Justice
Confederation Building
St. John's, Newfoundland
A1C 5T7 (709) 737-2887

Résumé: Le ministère de la Justice agit pour le
ministère des Services sociaux dans les
affaires de protection de l'enfance.

Curateur public ou tuteur officiel:

Le gouvernement de Terre-Neuve et du Labrador n'est pas
actuellement doté d'un curateur public ni d'un tuteur
officiel pouvant se préoccuper des questions de garde et de
soutien d'enfant. Le greffier de la Cour suprême de
Terre-Neuve veille à l'intérêt de l'enfant pour les
questions de succession et tout point se rapportant à ce
domaine.

Toutes les questions relatives au droit de la famille:

Mrs. E.P. Noonan
Solicitor
Department of Justice
Confederation Building
St. John's, Newfoundland
A1C 5T7

(709) 737-2887

Accords internationaux de réciprocité:

États-Unis:

Californie
Maryland
Caroline du Nord
Wisconsin

Autres:

Territoire de la capitale australienne
Angleterre et Irlande du Nord
Guernesey
Île de Man
Jersey
Malte
Territoire de l'Australie septentrionale
Nouvelle-Guinée
Nouvelles-Galles du Sud
Nouvelle-Zélande
Papouasie
Queensland
République de Singapour
Australie méridionale
Tasmanie
Victoria
Australie occidentale
Zimbabwe

CHAPITRE 12: TERRITOIRES DU NORD-OUEST

Exécution réciproque des ordonnances de soutien

Lois pertinentes: Maintenance Orders Facilities for
Enforcement Ordinance
Maintenance Orders Enforcement Ordinance

Agent d'exécution: Legal Division
Department of Justice & Public
Services, Government of
the Northwest Territories
Yellowknife, N.W.T.
X1A 2L9

Personne à
consulter: William J. Wilkins
Legal Counsel
Legal Division
Department of Justice & Public
Services (même adresse que ci-dessus)
(403) 873-7465

Résumé: A la demande d'un tribunal homologue,
les procureurs de la Direction des
services juridiques veilleront à
l'exécution des ordonnances de soutien
rendues à l'étranger, et se présenteront
à cette fin aux audiences du tribunal.

L'exécution des ordonnances de pension
alimentaire se fait habituellement par
voie de saisie-arrêt et d'audience de
justification.

Tribunaux et greffiers:

Palais de justice de Yellowknife Greffier A. Milton
(873-7643)

Palais de justice de Hay River: Greffier C. Mains
(874-6509)

Exécution des ordonnances étrangères de garde:

Lois pertinentes: Extra-Provincial Custody Orders
Enforcement Act
Loi sur le divorce

Agent d'exécution: Avocat de pratique privée

Résumé: Le gouvernement des Territoires du Nord-Ouest n'intervient pas dans l'exécution des ordonnances de garde d'enfant rendues à l'étranger. Par conséquent, il est indiqué de s'adresser à un avocat du secteur privé pour faire exécuter une telle ordonnance dans les Territoires du Nord-Ouest.

Service de recherche:

Il n'existe pas, dans les Territoires du Nord-Ouest, de service de recherche particulier en matière d'ordonnances de soutien et de garde d'enfant, si ce n'est le recours habituel au bureau du shérif, pour la signification des documents.

Ordonnances intraprovinciales de soutien:

Lois pertinentes: Maintenance Orders (facilities for Enforcement) Ordinance
Maintenance Orders Enforcement Ordinance

Agent d'exécution: Avocat de pratique privée

Résumé: Le ministère de la Justice et des Services publics des Territoires du Nord-Ouest n'intervient pas au nom des résidents des territoires, en vue de l'obtention ou de l'exécution d'ordonnances de pension alimentaire qui mettent en cause d'autres résidents des territoires. En l'espèce, les parties doivent exercer leurs recours par l'intermédiaire de l'aide juridique ou de leur propre avocat.

Ordonnances intraprovinciales de garde d'enfant:

Lois pertinentes: Infants Ordinance
Loi sur le divorce

Agent d'exécution: Avocat de pratique privée

Résumé: Le ministère de la Justice et des Services publics des Territoires du Nord-Ouest n'intervient pas en vue de l'obtention ou de l'exécution d'ordonnances de garde d'enfant qui mettent en cause des résidents des territoires, lesquels doivent avoir leur propre avocat.

Aide juridique:

Legal Services Board
(Commission des services juridiques)
Department of Justice & Public Services
Government of the Northwest Territories
Yellowknife, N.W.T.
X1A 2L9

Directeur général: William Douglas Miller
Adjoint à la direction: Marjorie Eschak

Protection de l'enfance:

Loi pertinente: Child Welfare Ordinance

Agent d'exécution: Department of Social Services
Government of the Northwest Territories
Yellowknife, N.W.T.
X1A 2L9

Personne à
consulter: Diane Doyle
Surintendant de la protection
de l'enfance
(même adresse que ci-dessus)
(403) 873-7312

Curatelle publique ou tutelle officielle:

Loi pertinente: Public Trustee Ordinance

Agent d'exécution: Public Trustee Officer
Department of Justice &
Public Services
Government of the Northwest Territories
Yellowknife, N.W.T.
X1A 2L9

Personnes à
consulter: Elsie Bagan
Agent de la curatelle publique
(même adresse que ci-dessus)
(403) 873-7464

Joel W. Fournier
Curateur public
(Même adresse que ci-dessus)
(403) 873-7437

Résumé: Le curateur public agit dans certains
cas au nom de la succession, dans les
questions de règlement successoral. Il

CHAPITRE 13: TERRITOIRE DU YUKON

Exécution réciproque des ordonnances de soutien:

Lois pertinentes: Reciprocal Enforcement of Maintenance
Orders Ordinance
Loi sur le divorce
Matrimonial Property and Family Support
Ordinance

Autorité
d'exécution: Department of Justice
Government of Yukon
Box 2703
Whitehorse, Yukon
K1A 2C6

Personne à
consulter: T.F. Duncan
Acting Deputy Minister of Justice
Government of Yukon
Box 2703
Whitehorse, Yukon
K1A 2C6

Résumé: À la demande d'une instance homologue,
les avocats du gouvernement aideront non
seulement à enregistrer les ordonnances
rendues dans d'autres juridictions, mais
aussi à obtenir des ordonnances
permanentes en remplacement des
ordonnances provisoires obtenues
ailleurs et à exécuter les ordonnances
permanentes de soutien et les
ordonnances en matière de divorce devant
la Cour territoriale.

Les ordonnances de soutien sont
habituellement exécutées au moyen de
saisies-exécution, d'inscriptions
d'hypothèques foncières, d'audiences de
justification et de poursuites pour
outrage au tribunal.

Tribunaux et greffiers:

James R. Simpson
Clerk of Territorial Court
Department of Justice
Government of Yukon
Box 2703
Whitehorse, Yukon
K1A 2C6

667-5437

agit au nom d'un enfant dans certaines circonstances mettant en cause une succession, et veille à l'héritage des enfants qui sont placés sous la protection de la Cour, mais il n'intervient pas dans les questions de soutien impliquant des enfants.

Accords internationaux de réciprocité:

États-Unis

Californie
Maryland
Massachusetts
New Jersey
État de New York
Dakota du Sud
Virginie

Autres

Territoire de Guernesey
Barbade
Angleterre
Île de Man
Jersey
Malte
Nouvelle-Zélande, y compris les îles Cook
Irlande du Nord
République de l'Afrique du Sud
Rhodésie
Singapour

A.A. Schmidt
Clerk of the Supreme Court
Government of Yukon
Box 2703
Whitehorse, Yukon
K1A 2C6

667-4431

Ordonnances intraprovinciales de garde:

Lois pertinentes: Loi sur le divorce
Proposed Children's legislation
International Child Abduction Ordinance
(qui sera bientôt incorporé à la
nouvelle ordonnance sur les enfants).

Agent d'exécution: Avocat de pratique privée

Résumé: Au Yukon, le ministère de la Justice
n'intervient pas pour obtenir ou faire
exécuter les ordonnances de garde
mettant en cause des résidents du Yukon;
ces derniers doivent donc retenir les
services de leur propre avocat. Dans
les circonstances appropriées, il est
possible d'obtenir l'aide juridique à la
suite d'une entente conclue entre les
autorités de l'aide juridique de la
juridiction où habite le parent à qui
est confiée la garde de l'enfant et les
responsables de l'aide juridique au
Yukon.

Exécution des ordonnances étrangères de garde d'enfant:

Loi pertinente: International Child Abduction Ordinance
(qui doit bientôt être édictée de
nouveau dans le cadre des nouvelles
mesures législatives visant les
enfants.)

Autorité
d'exécution: Avocat de pratique privée

Résumé: Le Yukon n'intervient pas dans
l'exécution des ordonnances étrangères
de garde d'enfant, sauf lorsque la
question relève d'articles du Code
criminel portant sur l'enlèvement

d'enfants. Quiconque souhaite faire exécuter une telle ordonnance au Yukon doit retenir les services de son propre avocat.

Service de recherche:

Il n'existe pas, au Yukon, de service de recherche particulier pour exécuter les ordonnances de soutien et de garde d'enfants, si ce n'est le recours habituel aux bureaux du shérif ou de la G.R.C., pour la signification des documents.

Ordonnances intraprovinciales de soutien:

Loi pertinente: Matrimonial Property and Family Support Act

Autorité d'exécution: Les avocats du gouvernement

Résumé: Les ordonnances ne sont soumises à aucune surveillance automatique, mais des discussions portent actuellement sur ce sujet.

Aide juridique:

Les avocats de la localité s'occupent des cas approuvés par le Comité de l'aide juridique.

Protection de l'enfance:

Loi pertinente: Child Welfare Ordinance
Cette ordonnance sera bientôt remplacée par de nouvelles mesures législatives visant les enfants.

Autorité d'exécution: Department of Health and Human Resources
Government of Yukon
Box 2703
Whitehorse, Yukon
K1A 2C6 (403) 667-5614

Personne à consulter: Ross Findlater
Director of Child Welfare
Government of Yukon
Department of Health and Human Resources
Box 2703
Whitehorse, Yukon
K1A 2C6 (403) 667-5689

Résumé

Le ministère de la Justice agit pour le ministère de la Santé et des ressources humaines. La Child Welfare Act prévoit la reconnaissance réciproque des ordonnances de protection d'enfant.

Toutes les questions relatives au droit de la famille:

Alastair Bisset-Johnson
Coordinator,
Juvenile and Family Law Reform
Department of Justice
Government of Yukon
Box 2703
Whitehorse, Y.T.

T.F. Duncan
Acting Deputy Minister
Department of Justice
Government of Yukon
Box 2703
Whitehorse, Yukon Territory

ÉTATS-UNIS

Répertoire national du soutien des enfants

CHAPTER 14: UNITED STATES NATIONAL CHILD SUPPORT DIRECTORY

ALABAMA

STATE PARENT LOCATOR SERVICE

Bureau of Public Assistance
Department of Pensions & Security
64 North Union Street
Montgomery, Alabama 36130
Telephone: (205) 832-6561

IV-D AGENCY

Bureau of Public Assistance
Department of Pensions & Security
64 North Union Street
Montgomery, Alabama 36130
Telephone: (205) 832-6561

URESA STATE INFORMATION AGENT

John A. Parrish, Director
Bureau of Public Assistance
Department of Pensions & Security
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Montgomery, Alabama 36130
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ALASKA

STATE PARENT LOCATOR SERVICE

Child Support Enforcement Agency
Department of Revenue
201 E. 9th Avenue, #202
Mail Stop 01
Anchorage, Alaska 99501
Telephone: (907) 276-3441, Ext.65

IV-D AGENCY

Child Support Enforcement Agency
Department of Revenue
201 E. 9th Avenue, #202
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URESA STATE INFORMATION AGENT

Fred D. Smith, Enforcement Officer
Child Support Enforcement Agency
Department of Revenue
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AMERICAN SAMOA

STATE PARENT LOCATOR SERVICE

Office of the Attorney General
P.O. Box 7
Pago Pago, American Samoa 96799
Telephone: 633-4163

IV-D AGENCY

Office of the Attorney General
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URESA STATE INFORMATION AGENT

F.V. Vaovasa
Assistant Attorney General
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ARIZONA

STATE PARENT LOCATOR SERVICE

Child Support Enforcement Section
Department of Economic Security
P.O. Box 6123
Phoenix, Arizona 85005
Telephone: (602) 255-4759

IV-D AGENCY

Child Support Enforcement Section
Department of Economic Security
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URESA STATE INFORMATION AGENT

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Child Support Enforcement Section
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ARKANSAS

STATE PARENT LOCATOR SERVICE

Child Support Enforcement Unit
Arkansas Social Services Division
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Telephone: (501) 371-1614

IV-D AGENCY

Child Support Enforcement Unit
Arkansas Social Services Division
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Little Rock, Arkansas 72203
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URESA STATE INFORMATION AGENT

Ivan H. Smith
Director of Legal Services
Arkansas Social Services Division
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Little Rock, Arkansas 72203
Telephone: (501) 371-1981

CALIFORNIA

STATE PARENT LOCATOR SERVICE

Parent Locator Service
1800 I Street
P.O. Box 13300
Sacramento, California 95813
Telephone: (916) 445-6215

IV-D AGENCY

Support Enforcement Branch
Department of Social Services
744 P Street
Sacramento, California 95814
Telephone: (916) 322-6384

URESA STATE INFORMATION AGENT

Gloria F. DeHart
Deputy Attorney General
Office of the Attorney General
6000 State Building
San Francisco, California 94832
Telephone: (415) 557-0799

COLORADO -

STATE PARENT LOCATOR SERVICE

Department of Social Services
1575 Sherman Street
Denver, Colorado 80203
Telephone: (303) 839-2422

IV-D AGENCY

Division of Child Support
Enforcement
Department of Social Services
1575 Sherman Street
Denver, Colorado 80203
Telephone: (303) 839-2422

URESA STATE INFORMATION AGENT

Kathie Huskey
Division of Child Support Enforcement
Department of Social Services
1575 Sherman Street
Denver, Colorado 80203
Telephone: (303) 839-2422

CONNECTICUT

STATE PARENT LOCATOR SERVICE

Bureau of Child Support
Department of Human Resources
110 Bartholomew Avenue
Hartford, Connecticut 06115
Telephone: (203) 566-3053

IV-D AGENCY

Bureau of Child Support
Department of Human Resources
110 Bartholomew Avenue
Hartford, Connecticut 06115
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URESA STATE INFORMATION AGENT

Anthony J. Salius, Director
Superior Court
Family Division
80 South Main Street
West Hartford, Connecticut 06107
Telephone: (203) 566-5914

DELAWARE

STATE PARENT LOCATOR SERVICE

Bureau of Child Support Enforcement
Department of Health & Social
Services
920 Church Street
Wilmington, Delaware 19801
Telephone: (302) 571-3620

IV-D AGENCY

Bureau of Child Support Enforcement
Depar. of Health & Social Services
920 Church Street
Wilmington, Delaware 19801
Telephone: (302) 571-3620

URESA STATE INFORMATION AGENT

William McDonough
Chief of Support for Family Court
Family Court of Delaware
600 Market,
P.O. Box 2359
Wilmington, Delaware 19899
Telephone: (302) 571-2592

DISTRICT OF COLUMBIA

STATE PARENT LOCATOR SERVICE

Office of Paternity and Child
Support Enforcement
Department of Human Resources
601 Indiana Avenue, NW, Room 1000
Washington, D.C. 20001

IV-D AGENCY

Office of Paternity & Child Support
Enforcement
Department of Human Resources
601 Indiana Avenue, NW, Room 1008
Washington, D.C. 20001
Telephone: (202) 724-8820

URESA STATE INFORMATION AGENT

George Masson, Assistant
Corporation Counsel
D.C. Office of Corporation Counsel
500 Indiana Avenue, NW, Room 4450
Washington, D.C. 20004
Telephone: (202) 727-3888

FLORIDA

STATE PARENT LOCATOR SERVICE

Child Support Enforcement
Department of Health & Rehabilitation
Services
1317 Winewood Boulevard
Tallahassee, Florida 32301
Telephone: (904) 488-9900

IV-D AGENCY

Child Support Enforcement
Department of Health & Rehabilitation
Services
1317 Winewood Boulevard
Tallahassee, Florida 32301
Telephone: (904) 488-9900

URESA STATE INFORMATION AGENT

Honorable James C. Smith
Attorney General
Attn: URESA Information Agent
The Capitol
Tallahassee, Florida 32304
Telephone: (904) 488-7750

GEORGIA

STATE PARENT LOCATOR SERVICE

Child Support Recovery Unit
Department of Human Resources
618 Ponce de Leon Avenue NE
Atlanta, Georgia 30308
Telephone: (404) 894-4118

IV-D AGENCY

Child Support Recovery Unit
Department of Human Resources
618 Ponce de Leon Avenue NE
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URESA STATE INFORMATION AGENT

Edwin Pledger
Child Support Recovery Unit
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Atlanta, Georgia 30308
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GUAM

STATE PARENT LOCATOR SERVICE

Child Support Enforcement Unit
Department of Public Health &
Social Services
P.O. Box 2816
Agana, Guam 96910
Telephone: 734-9901

IV-D AGENCY

Child Support Enforcement Unit
Department of Public Health &
Social Services
P.O. Box 2816
Agana, Guam 96910
Telephone: 734-9901

URESA STATE INFORMATION AGENT

Office of the Attorney General
P.O. Box DA
Agana, Guam 96910
Telephone: 472-6841

HAWAII

STATE PARENT LOCATOR SERVICE

Depart. of Social Services & House.
P.O. Box 339
Honolulu, Hawaii 96809
Telephone: (808) 548-5779

IV-D AGENCY

Program Development Office
Department of Social Services
Housing
P.O. Box 339
Honolulu, Hawaii 96809
Telephone: (808) 548-5904

URESA STATE INFORMATION AGENT

Helen Onoye, Program Administrator
Program Development Office
Department of Social Services
Housing
770 Kapiolani Blvd., Room 706
Honolulu, Hawaii 96813
Telephone: (808) 548-5904

IDAHO

STATE PARENT LOCATOR SERVICE

Bureau of Support Enforcement
Department of Health & Welfare
Statehouse Mail
Boise, Idaho 83720
Telephone: (208) 384-2480

IV-D AGENCY

Bureau of Support Enforcement
Department of Health & Welfare
Statehouse Mail
Boise, Idaho 83720
Telephone: (208) 384-2160

URESA STATE INFORMATION AGENT

Patricia Barrell, Manager
Field Operations
Bureau of Support Enforcement
Department of Health & Welfare
Statehouse Mail
Boise, Idaho 83720
Telephone: (208) 384-2480

ILLINOIS

STATE PARENT LOCATOR SERVICE

Bureau of Child Support
Department of Public Aid
316 South 2nd Street
Springfield, Illinois 62762
Telephone: (217) 782-1383

IV-D AGENCY

Bureau of Child Support
Department of Public Aid
316 South 2nd Street
Springfield, Illinois 62762
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URESA STATE INFORMATION AGENT

Dale E. Johnson, Chief
Bureau of Child Support
Department of Public Aid
316 South 2nd Street
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INDIANA

STATE PARENT LOCATOR SERVICE

Child Support Division
Department of Public Welfare
141 South Meridian Street, 4th Fl.
Indianapolis, Indiana 46225
Telephone: (317) 633-6906

IV-D AGENCY

Child Support Division
Department of Public Welfare
141 South Meridian Street, 4th Fl.
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URESA STATE INFORMATION AGENT

Coordinator
Parent Locator Service
Child Support Division
Department of Public Welfare
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Telephone: (317) 633-6906

IOWA

STATE PARENT LOCATOR SERVICE

Child Support Recovery Unit
Department of Social Services
Hoover Building, 1st Floor
Des Moines, Iowa 50319
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IV-D AGENCY

Child Support Recovery Unit
Department of Social Services
Hoover Building, 1st Floor
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URESA STATE INFORMATION AGENT

John Terrell, Administrator
Bureau of Collections
Department of Social Services
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KANSAS

STATE PARENT LOCATOR SERVICE

Department of Social & Rehabilitation
Services
Biddle Building, 2nd Floor
700 West 6th
Topeka, Kansas 66606
Telephone: (913) 296-4180

IV-D AGENCY

Child Support Enforcement Program
Depart. of Social & Rehabilitation
Services
Biddle Building, 2nd Floor
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Topeka, Kansas 66606
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URESA STATE INFORMATION AGENT

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Depart. of Social & Rehabilitation
Services
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Topeka, Kansas 66606
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KENTUCKY

STATE PARENT LOCATOR SERVICE

Child Support Branch
Department for Human Resources
Bureau for Social Insurance
275 E. Main Street, 6th Floor East
Frankfort, Kentucky 40621
Telephone: (502) 564-2285

IV-D AGENCY

Child Support Branch
Department for Human Resources
Bureau for Social Insurance
275 East Main Street, 6th Floor E.
Frankfort, Kentucky 40601
Telephone: (502) 564-2285

URESA STATE INFORMATION AGENT

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Office of the Counsel
Department for Human Resources
275 East Main Street, 4th Floor W.
Frankfort, Kentucky 40621
Telephone: (502) 564-7900

LOUISIANA

STATE PARENT LOCATOR SERVICE

Office of Family Security
Health & Human Resource Admin.
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Baton Rouge, Louisiana 70804
Telephone: (504) 342-4780

IV-D AGENCY

Office of Family Security
Health & Human Resource Admin.
P.O. Box 44065
Baton Rouge, Louisiana 70804
Telephone: (504) 342-4780

URESA STATE INFORMATION AGENT

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Health & Human Resource Admin.
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MAINE

STATE PARENT LOCATOR SERVICE

Central Location Section
Support Enforcement Program
Department of Human Services
State House
Augusta, Maine 04333
Telephone: (207) 289-2886

IV-D AGENCY

Support Enforcement Program
Department of Human Services
State House
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Telephone: (207) 289-2886

URESA STATE INFORMATION AGENT

Colburn W. Jackson, Director
Support Enforcement Program
Department of Human Services
State House
Augusta, Maine 04333
Telephone: (207) 289-2886

MARYLAND

STATE PARENT LOCATOR SERVICE

Bureau of Support Enforcement
Social Services Administration
11 South Street
Baltimore, Maryland 21202
Telephone: (301) 383-3284

IV-D AGENCY

Bureau of Support Enforcement
Social Services Administration
11 South Street
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URESA STATE INFORMATION AGENT

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11 South Street
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MASSACHUSETTS

STATE PARENT LOCATOR SERVICE

Child Support Enforcement Unit
Department of Public Welfare
600 Washington
Boston, Massachusetts 02111
Telephone: (617) 727-7820

IV-D AGENCY

Child Support Enforcement Unit
Department of Public Welfare
600 Washington
Boston, Massachusetts 02111
Telephone: (617) 727-7820

URESA STATE INFORMATION AGENT

Gertrude L. Linehan, Director
Child Support Enforcement Unit
Department of Public Welfare
600 Washington
Boston, Massachusetts 02111
Telephone: (617) 727-7820

MICHIGAN

STATE PARENT LOCATOR SERVICE

Office of Child Support
Department of Social Services
300 S. Capitol Avenue
P.O. Box 30037
Lansing, Michigan 48909
Telephone: (517) 373-7570

IV-D AGENCY

Office of Child Support
Department of Social Services
300 S. Capitol Avenue
P.O. Box 30037
Lansing, Michigan 48909
Telephone: (517) 373-7570

URESA STATE INFORMATION AGENT

Jerrold H. Brockmyre, Director
Office of Child Support
Department of Social Services
300 S. Capitol Avenue
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Lansing, Michigan 48909
Telephone: (517) 373-7570

MINNESOTA

STATE PARENT LOCATOR SERVICE

Office of Support Enforcement
Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2542

IV-D AGENCY

Office of Support Enforcement
Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2499

URESA STATE INFORMATION AGENT

Bonnie L. Becker, Director
Office of Support Enforcement
Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2499

MISSISSIPPI

STATE PARENT LOCATOR SERVICE

Child Support Enforcement Unit
Department of Public Welfare
P.O. Box 352
Jackson, Mississippi 39205
Telephone: (601) 354-0341

IV-D AGENCY

Child Support Enforcement Unit
Department of Public Welfare
P.O. Box 352
Jackson, Mississippi 39205
Telephone: (601) 354-0341

URESA STATE INFORMATION AGENT

Fay Nobles Pascoe
Special Assistant Attorney General
Mississippi Attorney General
P.O. Box 220
Jackson, Mississippi 39201
Telephone: (601) 354-7130

MISSOURI

URESA STATE INFORMATION AGENT

Hank Stoltz
Division of Social Services
Department of Social Services
Broadway State Office Building
Jefferson City, Missouri 65101
Telephone: (314) 751-3274

MONTANA

STATE PARENT LOCATOR SERVICE

Child Support Enforcement Bureau
Department of Revenue
Mitchell Building
Helena, Montana 49601
Telephone: (406) 499-2846

IV-D AGENCY

Child Support Enforcement Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59601
Telephone: (406) 499-2846

URESA STATE INFORMATION AGENT

Michael G. Garrity
Legal Division
Department of Revenue
Mitchell Building
Helena, Montana 59601
Telephone: (406) 499-2852

NEBRASKA

STATE PARENT LOCATOR SERVICE

Child Support Enforcement Office
301 Centennial Mall South, 5th Fl.
P.O. Box 95026
Lincoln, Nebraska 68509
Telephone: (402) 471-3121, Ext.132

IV-D AGENCY

Child Support Enforcement Office
Department of Public Welfare
301 Centennial Mall South, 5th Fl.
P.O. Box 95026
Lincoln, Nebraska 68509
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FEDERAL-PROVINCIAL CONFERENCES OF
ATTORNEYS GENERAL, MINISTERS RESPONSIBLE FOR CRIMINAL JUSTICE
AND MINISTERS RESPONSIBLE FOR CORRECTIONS

Report of the Federal-Provincial
Working Group on Central Registry
for Security Interests in Aircraft

Federal-Provincial Working Group



OTTAWA (Ontario)
July 11 - 12, 1983

REPORT OF THE FEDERAL-PROVINCIAL WORKING GROUP ON CENTRAL
REGISTRY FOR SECURITY INTERESTS IN AIRCRAFT

Ottawa,
May 5, 1983



Ottawa, Canada
K1A 0H8

June 7, 1983

Mr. Roger Tassé, Q.C.
Deputy Minister of Justice
Room 346
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Dear Mr. Tassé:

At the meeting of Deputy Ministers in June, 1981, it was decided to establish a Federal/Provincial Working Group on a Central Registry for Security Interests in Aircraft. I was asked to chair the Working Group which prepared a report circulated to the provinces for comment early in July, 1982. The meeting of Deputy Ministers decided, on December 2, 1982, to keep the Working Group in existence with the mandate to prepare, for the purpose of Federal/Provincial consultation at the Deputy Ministers' level, draft federal and provincial legislation on a central registry for security interests in aircraft and a report on the financial and administrative aspects of that subject. The Working Group has taken the action requested. I have the pleasure of attaching the Report of The Task Force.

The Working Group held three formal sessions (September 15, 1981, November 18-20, 1981 and March 24-26, 1982), met with groups interested in the aircraft financing field, and prepared a report which the Federal Deputy Minister of Justice circulated to his provincial counterparts on July 7, 1982 for comment. There followed an informal meeting of members of the Working Group on November 3-4, 1982 at which it was concluded that it was feasible to draft dovetailing legislation in the form of a Federal Act, as well as a Model Provincial Act, on a central registry for security interests in aircraft. It was noted,

.....2/

at that time, that, in order to give effect to the legislative scheme, it would be necessary for all provinces to enact the Model Provincial Act. As you know, on December 2, 1982, a meeting of Deputy Ministers of Justice decided to keep the Federal/Provincial Working Group in existence with the mandate to prepare by March 31, 1983, for the purpose of federal-provincial consultation at the Deputy Ministers' level draft federal and provincial legislation on a central registry for security interests in aircraft and a report on the financial and administrative aspects of that subject.

The Working Group held its fourth formal session, during the period January 31-February 2, 1983, and prepared a draft Federal Act providing for the establishment of a central registry for security interests in aircraft and a draft Model Provincial Act providing for the use of that registry. Subsequently, the federal Department of Justice retained Professor R.C.C. Cuming, Q.C., College of Law, University of Saskatchewan, as a consultant to scrutinize the draft Acts both of which had been modified as a result of comments received from various members of the Working Group after its fourth session. The Working Group approved the revised drafts prepared after this consultation through a canvass by correspondence. As a result of the additional consultation with Professor Cuming and a further consultation with members of the Working Group, the date for submission of the report was delayed from March 31, 1983, to May 5, 1983.

I hope the Working Group has complied with its terms of reference in that it has prepared a report which contains not only a federal-provincial legislative scheme (in the form of draft federal and provincial bills) for the establishment of a central registry for security interests in aircraft, but also contains a discussion of the financial and administrative implications of that scheme.

In that regard, the Federal Act would provide for the establishment and administrative framework of the central registry for security interests in aircraft in which would be registered notices of interest in Canadian-registered aircraft.

In addition the Model Provincial Act would provide that:

(a) No security interest in a Canadian-registered aircraft is required to be registered in a registry, other than the central aircraft, registry established by the federal act, in order to be valid or to take priority as provided in the provincial act.

(b) The priority of interests in an aircraft would be determined in accordance with the respective dates of the registration of those interests in the central aircraft registry.

The legislative scheme would provide for implementation of the Convention on the International Recognition of Rights in Aircraft (Geneva, 1948) by stipulating that when an aircraft of a State party to the Convention is sold, for example in a province, for the purpose of forcibly exercising or otherwise enforcing rights under a contract or under a judgement of a court, the rights described in that Convention would be recognized in that province.

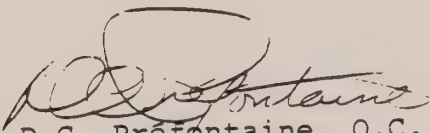
It is important to note that existing personal property security laws would continue to apply to aircraft except for the effect of the substitution of the central aircraft registry as the one in which interests in aircraft would be registered.

The Working Group believes that the allocation of the essential elements of the legislative scheme is workable and will ensure that the scheme will not be struck down at the instance of a private party on constitutional grounds.

According to the Working Group, as the registry input and output volume is expected to be low, the registry will not be financially self-sufficient based on fees, and will require continuing support. The report of the Working Group contains, in paragraph 19, an estimate of the resources required for the establishment and operation of the registry.

In the view of the Working Group, the draft Federal Bill and the draft Model Provincial Bill could form the basis for the establishment of a central registry for security interests in aircraft and also provide for effective implementation of the Geneva Convention on the International Recognition of Rights in Aircraft (1948). All of which is respectfully submitted.

Yours sincerely,



D.C. Préfontaine, Q.C.
Assistant Deputy Minister

5/05/83

REPORT OF THE FEDERAL/PROVINCIAL WORKING GROUP ON CENTRAL
REGISTRY FOR SECURITY INTERESTS IN AIRCRAFT

Fourth Session

Regina, January 31 - February 2, 1983

Ottawa,
May 5, 1983

(i) -

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5/05/83

REPORT OF THE FEDERAL/PROVINCIAL WORKING GROUP ON CENTRAL
REGISTRY FOR SECURITY INTERESTS IN AIRCRAFT*

(Fourth Session Regina January 31 - February 2, 1983)

I. INTRODUCTION

1. At the meeting of Deputy Ministers of Justice in June, 1981, it was decided to establish a Federal/Provincial Working Group on a Central Registry for Security Interests in Aircraft.** The Working Group prepared a report containing a list of points for possible inclusion in a legislative scheme for the establishment of the central registry. The report was circulated to the provinces for comment early in July, 1982. On December 2, 1982, the Deputy Ministers requested the Working Group to prepare by March 31, 1983, for the purpose of federal/provincial consultation at the Deputy Ministers' level, draft federal and provincial legislation on a central registry for security interests in aircraft and a report on the financial and administrative aspects of that subject. The present report contains both these items.

II. BACKGROUND

1. Problems arising out of lack of central registry for registration of interests in aircraft

2. Aircraft manufacturers, owners and operators of aircraft, as well as financial institutions that fund the purchase of aircraft, encounter serious problems due to the lack of a central registry in Canada for the registration of interests in aircraft. One reason

* While the original title of the Working Group envisaged a "national aircraft registry", the Working Group has focused on the concept of a "central registry". Hence, this report, where appropriate, uses the word "central" instead of "national" in referring to the aircraft registry.

** For a list of the members of the Working Group, see Appendix D.

for this is because the registration of personal property interests in aircraft is dealt with differently in each provincial jurisdiction. Also, many provinces require, for protection of an interest in an aircraft, that the interest be registered again when the aircraft moves from one jurisdiction to another. For example, at present, an interest registered, with respect to a Canadian aircraft, in one province will not necessarily be recognized in another province, or enjoy priority over an interest registered at a later date in another province. Moreover, such a security interest in a Canadian aircraft will not necessarily be recognized or given priority in the case of the forced sale of that aircraft outside Canada. Similarly, the interests in foreign-registered aircraft that come to Canada will not necessarily be recognized or have priority in Canada.

2. Solution: Establishment of a central registry

3. The above-mentioned factors present considerable difficulty for the protection of financial investments in aircraft. This difficulty has resulted in representations urging the establishment of a central registry in which all interests in aircraft are registered. A major benefit of the establishment of a central registry for those who have secured interests in aircraft would be the recognition of those interests throughout Canada.

4. The establishment of a central registry would also bring about the international recognition of interests in Canadian aircraft and recognition in Canada of interests in foreign aircraft. This would be accomplished if Canada became a party (once implementing legislation is in place) to the Convention on the International Recognition of Rights in Aircraft (Geneva, 1948). As at March 31, 1983, there were forty-seven parties to this Convention.* The Convention provides for international recognition of certain interests regularly recorded in a single public record of the Contracting State in which the aircraft is registered as to nationality. With a view to implementing the Convention and providing a

* For a list of the signatories of, and parties to the Convention, see Appendix C.

registry, Bill S-9 (1973) and Bill S-5 (1974-75) were presented to Parliament but were not adopted. The question having been revived, there were preliminary consultations with the provinces and industry early in 1981, and in June of that year the present Working Group was appointed.

III. SESSIONS OF THE WORKING GROUP

1. Development of the legislative scheme

5. The Working Group, chaired by D.C. Préfontaine, Q.C., General Counsel, Policy Planning and Criminal Law Amendments,* Federal Department of Justice, with Dr. Gerald F. FitzGerald, Q.C., as Acting Chairman, held four sessions (September 15, 1981, November 18-20, 1981, March 24-26, 1982 and January 31 - February 2, 1983). Having met with groups interested in the aircraft financing field, the Working Group prepared, at its Third Session, a report which the federal Deputy Minister of Justice circulated to his provincial counterparts, on July 7, 1982, for comment. The report contained a List of Points for possible inclusion in a legislative scheme for the establishment of a Central Registry for Security Interests in Aircraft and a statement of the allocation of items in the List of Points as between federal and provincial legislative jurisdiction. (For a discussion of the constitutional aspects of the legislative scheme, see paragraphs 6 and 7 below.) The Working Group envisaged a legislative scheme involving interlocking federal and provincial legislation. In its report the Working Group noted that the subject of a Central Registry for Security Interests in Aircraft involves consideration of complex personal property security matters. Nevertheless, the Working Group concluded that the legislative scheme, outlined in the List of Points and allocated as to constitutional responsibility, is broadly speaking, a workable, though complex, way to achieve the establishment of a national registry.

2. Constitutional aspects of the legislative scheme

6. It is possible to argue that the aeronautics power, which lies within federal jurisdiction,

* More recently, Acting Assistant Deputy Minister, Policy Planning and Development.

includes the power to legislate on the establishment of a central registry in which security and other interests in aircraft can be registered. On this basis, some associations prominent in the financing field have submitted that there should be an exclusively federal system that would cater for the registration of interests in aircraft. In that view, a federal system would overcome the uncertainty inherent in the present system whereby interests in aircraft are registered on the provincial level. However, on the occasion of the consideration of Bill S-5 in 1974-75, the provinces submitted that the proposed federal system for registration of interests in aircraft was a matter of property and civil rights and, therefore, within provincial jurisdiction. Given this divergence of views on the constitutionality of a federal system, the Working Group undertook to prepare the best scheme of legislation possible without regard, in the first instance, to which level of government, federal and provincial, would have legislative competence in the legislative scheme.

7. As the objective is to afford certainty to those who finance the sale and purchase of aircraft, the Working Group considers that the legislative scheme ultimately selected must not be open to attack on constitutional grounds. Under the legislative scheme, the federal legislation would establish the necessary administrative framework of the central registry and provide for registration in that registry of security interests arising under federal law. The provincial legislation would provide for registration in the central registry of security interests arising under provincial law as well as for priorities and procedures for enforcement of rights. The Working Group believes that this allocation is workable and will ensure that the scheme will not be struck down at the instance of a private party on constitutional grounds.

3. Essential elements of the legislative scheme

8. The federal act would provide for the establishment of a central registry for security interests in aircraft in which would be registered notices of interest in Canadian-registered aircraft.

9. A model provincial act would provide that:

(a) No security interest in a Canadian-registered aircraft is required to be registered in a registry,

other than the central aircraft registry established by the federal act, in order to be valid or to take priority as provided in the provincial act.

(b) The priority of interests in an aircraft would be determined in accordance with the respective dates of the registration of those interests in the central aircraft registry.

(c) The Convention on the International Recognition of Rights in Aircraft (Geneva, 1948) would be implemented by stipulating that when an aircraft of a State party to the Convention is sold in a province, for the purpose of forcibly exercising or otherwise enforcing rights under a contract or under a judgment of a court, the rights described in that Convention would be recognized in that province.

It is important to note that existing personal property security laws would continue to apply to aircraft except for the effect of the substitution of the central aircraft registry as the one in which interests in aircraft would be registered.

4. Feasibility of drafting interlocking legislation

10. At an informal meeting of certain members (federal officials and officials from Alberta, Ontario and Québec) of the Working Group, held in Toronto on November 3-4, 1982, it was concluded that it was feasible to draft interlocking legislation in the form of a federal act, as well as a model provincial act, on the central registry for security interests in aircraft. It was noted, however, that, in order to give effect to the legislative scheme, it would be necessary for all provinces to enact the model provincial act in substance if not necessarily in its exact form.

IV. PREPARATION OF DRAFT LEGISLATION

11. At its Fourth Session, the Working Group prepared a draft federal act (Appendix A) and a model provincial act (Appendix B) on the basis of the List of Points appended to the report of its Third Session, bearing in mind comments received from the provinces (British Columbia, Ontario and Saskatchewan) on those Points. After the Fourth Session, Professor R.C.C. Cuming, Q.C., College of Law, University of Saskatchewan, was retained as a consultant by the

federal Department of Justice to scrutinize the draft Federal Act and the draft model Provincial Act prepared by the Working Group as already modified as a result of comments received from various members of the Working Group. Having regard to those comments as well as suggestions made by Professor Cuming, in consultation with Mrs. G. Jackson, the Saskatchewan member of the Working Group, the draft Federal Act set forth in Appendix A and the draft model Provincial Act set forth in Appendix B were approved by the Working Group through a canvass by correspondence. One member, however, considered that the provisions on the sale of foreign aircraft were too broad for the objective sought to be attained.

12. The federal act would, to the extent possible, be restricted to administrative and procedural matters with substantive law being, with the exception of security interests arising under federal law, included in provincial legislation. This approach would avoid the complexity that could arise if an attempt were made to include extensive personal property security provisions relating to aircraft. On the other hand, while matters of substantive law would, to the extent possible, be left for inclusion in the provincial legislation, only a small number of personal property security provisions would have to be included in the model provincial act because only a limited number of changes to personal property security provisions existing in provincial law would be required in order to treat the aircraft as a unique chattel. These changes would include such matters as accessions and the use of the national registry for security interests in aircraft for the purpose of establishing the priority of interests.

13. Although provision would be made in the federal act and the model provincial act for the waiver of liens, charges and the like, such a waiver would apply only in the comparatively rare cases where the foreign aircraft (i.e., an aircraft of a State party to the Geneva Convention) was sold in execution in Canada. There would be no such waiver in the case of Canadian aircraft sold in Canada.

14. Eventually, policy decisions would have to be taken with respect to such matters as the cost of operating the national registry for security interests in aircraft and the payment of compensation in the event of errors and omissions. These matters are discussed under Headings VI and VII below.

V. CONSULTATIONS

15. As well as having available the written comments of provinces, the Working Group had the benefit of the active participation of the five provinces belonging to it, namely, Alberta, British Columbia, Ontario, Québec and Saskatchewan. The Working Group met with the Air Transport Association of Canada, the Association of Canadian Financial Corporations and the Canadian Bankers' Association. The Canadian Bar Association was contacted, and it asked to be kept informed of developments. In addition, at its Fourth Session, the Working Group had the benefit of advice from Professor R.C.C. Cuming, Q.C. College of Law, University of Saskatchewan.

VI. CENTRAL AIRCRAFT REGISTRY

1. Financial and Administrative Implications

16. The following are comments on the type of central aircraft registry for the registration of interests in Canadian aircraft that the federal Department of Transport would propose to establish. Included is an estimate of the cost of implementation of the registry and the annual operating costs.

2. Type of Registry Envisaged

17. The registry envisaged will involve a centralized notice filing system, using a computer, located at Ottawa. Notices of security interests in aircraft will be recorded at the registry by means of a financing statement completed by the registrant. Data will be entered into a computer from the financing statement by the registry staff. The statement would be retained on file for public inspection. Subsequent access to the data in the computer by the public, industry etc., will be by telephone, mail, or personal inquiry to the registry office. Inquiry responses will be free, but a fee will be charged for a copy of a computer listing, either certified or uncertified. Bilingual service and documentation will be provided.

18. Registry input and output volume is expected to be low with an estimated annual workload associated with 1,000 new aircraft registrations, 4,500 changes of aircraft registration and 450 aircraft removed from the Canadian Civil Aircraft Register. As a result, the registry will not be financially self-sufficient based on fees, and will require continuing support.

3. Estimated Resources Required

19. A preliminary estimate of the resources required to establish and operate the system are as follows:

(a) Capital Costs (1983 dollars)

(i) Office furniture and equipment	\$ 35,000
(ii) Computer terminals, printers and programming	300,000
	<u>\$ 335,000</u>

(b) Space Requirements

(i) administrative space	1092	sq.feet
(ii) public exam rooms	300	sq.feet
(iii) public inquiry room	200	sq.feet

(c) Personnel Resources

(i) Supervisor AS3	\$ 27,982
(ii) Clerical Staff CR5(1)	25,390
(iii) Clerical Staff CR4(3)	67,098
(iv) Clerical Staff CR2(2)	29,680
	<u>\$ 150,330</u>

Note: The estimated annual operating costs of the Registry after implementation will be:

(a) Computer maintenance, enhancement etc.- \$50,000.

(b) Staff salaries - \$150,330. See para. 19(c) above.

(c) Total estimated annual costs \$200,330.

VII. COMPENSATION FOR ERRORS AND OMISSIONS

1. Actions against the registrar

20. The Uniform Personal Property Security Act, 1982 (UPPSA, 1982), s. 51 of which is very detailed, provides for actions against the registrar by a person who suffers loss or damage "as a result of his reliance on a registered writing or printed search result that is incorrect because of an error in the operation of the registry". There is also provision for class actions or actions by trustees under trust indentures or by persons with an interest in trust indentures. Similar provisions are found in the Personal Property Security Acts of Manitoba (1973, c.

5, as amended, s. 45), Ontario (R.S.O. 1980, c.375, s. 45) and Saskatchewan (1979-80, c. P-6.1, as amended, s. 53). Also, Alberta has assurance fund legislation, in somewhat different terms, with respect to its central registry.

2. Courts

21. Without going into detail, it is observed that all of the four PPSAs mentioned above contemplate reference to a court: UPPSA, 1982 (each province to determine court), Manitoba (county court judge), Ontario (Master of the Supreme Court) and Saskatchewan (Court of Queen's Bench). An appeal to a higher court is contemplated in all cases. Also, in Saskatchewan, the Minister of Finance may, without action brought, pay the amount of a claim against the registrar when authorized to do so by the Attorney General on the report of the registrar setting forth the facts and the certificate of the registrar that in his opinion the claim is just and reasonable. (ss. 53(9)).

3. Limits on the amount of compensation

22. The limits on the amount of compensation are given in the Manitoba and Ontario PPSAs, but the UPPSA and the Saskatchewan PPSA refer to the "prescribed amount", i.e., the amount prescribed by regulation. It is contemplated in some cases that there would be one amount for a claim brought by a single person and a higher, global, amount in the event of a class action or claims brought on behalf of several persons. Briefly, the limits are as set forth below:

<u>UPPSA, 1982</u>	Prescribed amount per person (ss. 51(1)). Global prescribed amount (ss. 51(6)).
-Manitoba	\$25,000 per person (ss. 45(1)). \$200,000 global limit in case of corporate securities (ss. 45(2)).
- Ontario	Total amount is limited by amount currently in the Personal Property Security Assurance Fund which is an account in the Consolidated Revenue Fund (ss.45(3)).
- Saskatchewan	\$40,000 per person. \$400,000 global limit. These are prescribed amounts

contemplated by ss. 53(1) and 53(6) respectively.

4. Source of compensation

23. In Manitoba and Saskatchewan, payments of compensation are made from the Consolidation Fund. Ontario has the Personal Property Security Assurance Fund. This is nourished by setting aside \$0.20 per fee in a special account in the Consolidated Revenue Fund. In January, 1983, the total amount in the Fund was in excess of \$3,500,000. Ontario has had only one claim against the Fund since 1976 (when the Ontario PPSA came into force). There the award was in the amount of \$6,470. See Federal Business Development Bank v. Registrar of Personal Property Security, 38 O.R. (2d) 471 (1983).

5. Conclusions Concerning Compensation

24. The Working Group notes that the UPPSA, 1982 contains, in section 51, detailed provisions concerning the recovery of compensation in the case of errors and omissions by the registrar of a personal property security registry and has, with appropriate adaptations, incorporated these provisions in the federal Act. In this regard, in order to retain flexibility, the amount of compensation could be described as the "prescribed amount", and the court will be the Federal Court.

VIII. CONCLUSIONS

25. In the view of the Working Group the Draft Federal Bill and the Draft Uniform Provincial Bill could form the basis for the establishment of a central aircraft registry for security interests in aircraft and also provide for effective implementation of the Geneva Convention on the International Recognition of Rights in Aircraft (1948).

26. In Canada, the recording of rights in a Canadian aircraft in the central aircraft registry would, for the first time, bring about national recognition of the priority of rights as from the time of their registration in the new registry and thus enhance the position of parties engaged in financing transactions pertaining to an aircraft.

27. On the international level, the existence of a central aircraft registry in which interests in

Canadian aircraft are registered in an order of priority would enable one Canadian source to make available to a foreign court, concerned with the sale in execution of a Canadian aircraft, the record of the interests registered with respect to that aircraft and thus, pursuant to the Geneva Convention, ensure recognition by that court of those interests contemplated by that Convention and their respective priorities.

28. At the same time, the existence of provincial legislation providing for the recognition by Canadian courts of interests in foreign aircraft registered in a foreign registry is a quid pro quo for the recognition by foreign courts of interests in Canadian aircraft registered in the Canadian central aircraft registry.

IX. RECOMMENDATION

29. The Working Group recommends that the Draft Federal Bill and Draft Provincial Bill be presented for comment to:

(1) appropriate federal and provincial authorities;

(2) appropriate sectors of the Canadian aviation, financial and legal communities,

and that, if and when, it is decided to go forward with the legislation, it be in such flexible form as not to inhibit changes, consistent with the implementation of the Geneva Convention, that may occur, from time to time, in personal property security law whether at the federal or provincial level. Hence, it is important that the flexibility of the current drafts should be retained.

5/05/83

APPENDIX AFEDERAL BILL

Bill

An Act to establish a central registry for security interests in aircraft and to enable compliance with the Convention on the International Recognition of Rights in Aircraft.

SHORT TITLE

Short title

1. This Act may be cited as the Central Aircraft Registry Act.

INTERPRETATION

2. In this Act,

"accessions"

"accessions" means goods that are installed in or affixed to an aircraft;*

"aircraft"

"aircraft" means any machine used or designed for navigation of the air but does not include a machine designed to derive support in the atmosphere from reactions against the earth's surface of air expelled from the machine and, unless otherwise provided, means an aircraft registered as to nationality in Canada pursuant to the Aeronautics Act;

"Contracting State"

"Contracting State" means a State party to the Convention on the International Recognition of Rights in Aircraft signed at Geneva on the nineteenth day of June 1948;

"creditor"

"creditor" includes an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver, a receiver-manager, an executor, an administrator, a committee, a tutor or curator;

*The expression "accessions" may cause difficulty in the civil law context.

"debtor"

"debtor" means.

(i) a person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the aircraft or accessions and includes where the context requires:

(a) a lessee under a lease;

(b) a transferee of or successor to a debtor's interest in the aircraft or accessions; or

(ii) where a debtor is not the owner of the aircraft or accessions, an owner thereof in any provision dealing with the aircraft or accessions;

"financing statement"

"financing statement" means a document in the prescribed form that is required or permitted to be registered pursuant to this Act, and financing statement includes a financing change statement unless the context otherwise requires;

"foreign aircraft"

"foreign aircraft" means an aircraft registered as to nationality in a Contracting State other than Canada;

"foreign registry"

"foreign registry" means the public record of a Contracting State other than Canada in which rights in aircraft are recorded;

"Lease for a term of more than one year"

"lease for a term of more than one year" includes

(i) a lease for a term of one year or less that is automatically renewable or that is renewable at the option of one of the parties or by agreement for one or more terms, the total of which may exceed one year;

(ii) a lease initially for an indefinite term or a term of less than one year, where the lessee, with the consent of the lessor retains uninterrupted or substantially uninterrupted possession of the goods leased for a period in excess of one year after the date he first acquired possession of the goods, and the lease becomes a lease for more than one year as soon as the lessee's possession extends beyond one year;

but does not include a lease by a lessor who is not engaged in the business of leasing aircraft or accessions;

"Minister"	"Minister" means the Minister of Transport;
"prescribed"	"prescribed" means prescribed by the regulations;
"provincial law"	"provincial law" means an applicable law of a Canadian province or territory;
"registered"	"registered" means registered in the Central Aircraft Registry, unless the context requires otherwise;
"registrar"	"registrar" means the Registrar of the Central Aircraft Registry appointed under section 12;
"registry"	"registry" means the Central Aircraft Registry;
"secured party"	<p>"secured party" means</p> <p>(i) a person who has a security interest, and</p> <p>(ii) the trustee, if a security agreement is embodied in or evidenced by a trust indenture or similar document;</p>
"security agreement"	"security agreement" means an agreement that creates or provides for a security interest, and includes a writing evidencing a security agreement when the context permits;
"security interest"	"security interest" means an interest in a Canadian aircraft or accessions that secures payment or performance of an obligation, and includes the interest of a lessor under a lease of an aircraft or accessions for a term of more than one year notwithstanding that such a lease may not secure payment or performance of an obligation.

PURPOSE

Purpose

3. The purpose of this Act is to provide for the establishment of a central aircraft registry for security interests in aircraft or accessions and to provide for the performance of the obligations of Canada under the Convention on the International Recognition of Rights in Aircraft signed at Geneva on the nineteenth day of June 1948.

APPLICATION

Application
of Act

4. Except as provided in section 10, this Act applies to:

(a) Every security agreement creating a security interest in an aircraft or accessions in accordance with federal law.

(b) The registration of security interests in an aircraft or accessions created in accordance with applicable provincial and federal law.

Act does not
apply to
certain
aircraft

5. This Act does not apply with respect to any military or customs aircraft that is the property of Her Majesty in right of Canada or to any police aircraft that is the property of Her Majesty in right of Canada or of a province.

PRIORITIES

Steps to
priority

6.(1) This section applies to security interests created under any Act of the Parliament of Canada.

(2) Notwithstanding any other Act, no security interest, security agreement or notice of a security interest is required to be registered, filed or recorded except as provided herein in order to be valid or to take priority as provided in this Act.*

(3) In order to take priority as provided in sections 7, 8 and 9

(a) a security interest must be validly created and enforceable against third parties, and

(b) a financing statement with respect to the security interest must be registered regardless of the order of occurrence.

* For a provision on deemed registration "for the purpose of any other federal Act", see section 28 below.

Unregistered
security
interest

7. A security interest is subordinate to the interest of

(a) a person who, for the purposes of enforcing a judgment

(i) causes the aircraft or accessions to be seized under legal process or

(ii) obtains a court order affecting the aircraft or accessions;

(b) a representative of creditors but only for the purpose of enforcing the rights of persons mentioned in paragraph (a) and a trustee in bankruptcy; and

(c) A transferee of an interest in the aircraft or accessions who is not a secured party and who acquires his interest for value and without actual knowledge of the security interest

if the security interest is not registered in the central aircraft registry at the time the interests of the persons mentioned in paragraphs (a) to (c) arose.

Priority of
registered
security
interests

8. (1) If no other provision of this Act is applicable,

(a) priority between registered security interests in the same aircraft is determined by the order of registration.

(b) a registered security interest has priority over an unregistered security interest in the same aircraft.

(c) priority between unregistered security interests in the same aircraft is determined by the order of creation of the interests.

Priority of
assignee of
security
interest

(2) An assignee of a security interest has the same priority with respect to registration of the security interest as the assignor had at the time of the assignment.

Application
of priority

(3) The priority which a security interest in an aircraft has under this section applies to

(a) all advances made under the security agreement providing for the security interest whether or not the secured party is obligated to make the advances, and

(b) advances or expenditures made by the secured party for the protection, maintenance, preservation or repair of the aircraft.

Meaning of
"purchase
money security
interest"

(4) In subsection (5), "purchase money security interest" means

(a) a security interest that is taken or reserved in an aircraft to secure payment of all or part of the purchase price of the aircraft,

(b) a security interest in an aircraft taken by a person who gives value* for the purpose of enabling the debtor to acquire rights in or to the aircraft, to the extent that the value is applied to acquire such rights,

(c) the interest of a lessor of an aircraft under a lease for a term of more than one year.

* In the Section 2 of the draft Provincial Bill, there is the following definition:

(o) "value" means the granting of credit, the loaning of money or a binding agreement to do so and includes an antecedent debt or liability.

Priority of
purchase money
security
interest

(5) A purchase money security interest has priority over any other security interest in an aircraft given by the same debtor if the purchase money security interest is registered at the time the debtor receives possession of the aircraft.

Application
of priority
rules

(6) The priority rules of this section and sections 7 and 9, apply to security interests whether created under provincial or federal law.

Priority of
interest in
accession
goods

9.(1) A security interest taken in goods

(a) before they become an accession, subject to paragraph (b) has priority over an interest in the aircraft existing at the date the goods become an accession,

(b) before they become an accession, does not have priority over an interest of a person with a security interest in the aircraft at the time they become an accession to the extent of subsequent advances made or contracted by such person after the goods become an accession and before the security interest in the accessions is registered as prescribed,

(c) after they become an accession, has priority as to the goods over an interest subsequently acquired in the aircraft if the security interest in the goods is registered as prescribed before such interest is acquired,

(d) after they become an accession, does not have priority over an interest in the aircraft existing at the time the security interest in the accession was taken unless the holder of the interest in the aircraft consented to the security interest in the accession.

(2) The priority rules of section 8 apply mutatis mutandis to competing security interests in accessions.

SALE OF FOREIGN AIRCRAFT

Sale
proceedings

10.(1) Notwithstanding any other law to the contrary, no person may sell in Canada any foreign aircraft for the purpose of forcibly exercising or otherwise enforcing his rights under a contract or under a judgment of any court, unless that person

(a) makes an application, as appropriate, to a superior court of a province or the Federal Court of Canada for an order authorizing the sale, which application shall be accompanied by a certified extract from the applicable foreign registry of all rights recorded therein with respect to the aircraft;

(b) obtains an order from such court

(i) fixing the time and place of the sale, which time shall be not less than six weeks from the date the order is made, and

(ii) determining the place and manner in which public notice of the sale shall be given; and

(c) notifies each person in whose name a right is recorded in the foreign registry with respect to the aircraft of the time and place of the sale, which notification shall, not less than one month before the time of the sale, be given by registered mail addressed to each such person at his latest address as shown in the foreign registry.

Recognition
of rights

(2) The court to which an application is made pursuant to this section shall recognize:

(a) rights of property in aircraft;

(b) rights to acquire aircraft by purchase coupled with possession of the aircraft;

(c) rights to possession of aircraft under leases of six months or more;

(d) mortgages, hypothèques and similar rights in aircraft which are contractually created as security for payment of an indebtedness;

provided that such rights

(i) have been constituted in accordance with the law of the Contracting State in which the aircraft was registered as to nationality at the time of their constitution; and

(ii) are regularly recorded in a public record of the Contracting State in which the aircraft is registered as to nationality.

Regularity of recordings in Contracting States

(3) The regularity of successive recordings in different Contracting States shall be determined in accordance with the law of the Contracting State where the foreign aircraft was registered as to nationality at the time of each recording.

Priority of rights

(4) The priority of rights in a foreign aircraft shall be determined according to the law of the Contracting State where such rights are recorded.

Special claims

(5) In the event that any claims in respect of

(a) compensation due for salvage of a foreign aircraft, or

(b) extraordinary expenses indispensable for the preservation of a foreign aircraft

give rise, under the law of the Contracting State where the operations of salvage or preservation were terminated, to a right conferring a charge against the aircraft, such right shall be recognized and shall take priority over all other rights in the aircraft.

Idem

(6) The rights enumerated in paragraph (5) shall be satisfied in the inverse order of the dates of the incidents in connexion with which they have arisen.

Idem

(7) The said rights shall not be recognized after expiration of three months from the date of termination of the salvage or preservation operations unless, within this period,

(a) the right has been noted in the registry of the Contracting State where the aircraft is registered as to nationality, and

(b) the amount has been agreed upon or judicial action on the right has been commenced, it being understood that, as far as judicial action is concerned, the law of the forum shall determine the contingencies upon which the three-month period may be interrupted or suspended.

Preference for
costs

(8) Costs legally chargeable under the law of Canada, which are incurred in the common interest of creditors in the course of proceedings leading to a sale under this section, shall be paid out of the proceeds of sale before any claim including those given preference by subsection (5).

Extension of
priority

(9) The priority of a right mentioned in subsection (2), paragraph (d), extends to all sums thereby secured, except that, the amount of interest included shall not exceed that accrued during the three years prior to the proceedings leading to a sale under this section together with that accrued during such proceedings.

Liens and
charges

(10) Notwithstanding any other law to the contrary, no lien or charge other than those mentioned in subsection (2) in respect of a foreign aircraft and no lien or charge of Her Majesty in right of Canada in respect of that aircraft shall have priority over the interests mentioned in subsections (2) and (5) respectively and recorded with respect to the aircraft in a foreign registry of the Contracting State in which the aircraft is registered as to nationality.

Satisfaction
of priority
rights

(11) No foreign aircraft shall be sold in circumstances to which this section applies unless all rights having priority over the claim of the person at whose instance the sale was ordered are satisfied by the proceeds of sale or assumed by the purchaser.

Transfer of
aircraft

(12) Where pursuant to this section any court authorizes the sale of a foreign aircraft, the order so authorizing the sale shall upon payment of the proceeds into court

(a) vest in some person named by the court the right to transfer the foreign aircraft free of all interests in the foreign registry with respect to that aircraft; and

(b) fix in accordance with this section the order in which the claims against the aircraft are to be satisfied out of the proceeds of the sale.

Annulment of
sale

(13) Any sale of a foreign aircraft taking place in contravention of the requirements of subsection (1) may be annulled upon demand to a superior court made within six months from the date of the sale by any person suffering damage as the result of such contravention.

REGISTRATION SYSTEM

Registration
system

11. A registration system, to be known as the Central Aircraft Registry, is hereby established in the Department of Transport for the purposes of this Act.

Registrar

12.(1) The Minister shall appoint an official to be known as the Registrar of the Central Aircraft Registry.

(2) The registrar shall supervise the operation of the registry.

(3) The registrar may designate one or more deputy registrars as may be required for the operation of the registry.

Procedure for
registration

13. A financing statement or financing change statement claiming an interest in an aircraft or claiming an interest in accessions, may be tendered for registration by personal delivery or by mail, at the registry, and the registration is effective from the time recorded on the financing statement or financing change statement by the registrar.

Power of
registrar to
refuse
registration

14.(1) Where, in the opinion of the registrar or deputy registrar, a financing statement or financing change statement tendered for registration in the registry does not comply with this Act or the regulations, the registrar or deputy registrar may refuse to register it, and shall state the reasons for rejection.

Original
statement
required for
registration

(2) Any financing statement or financing change statement that is required or permitted to be registered under this Act must be the original.

- Deemed signature (3) For the purposes of this Act a financing statement or financing change statement is deemed to be signed by a person when it is signed by the person or his agent.
- Certified copy prima facie proof (4) A certificate of the registrar is receivable in evidence as prima facie proof of the time of the registration of a writing, without proof of his signature or official position.
- Photographing of writing (5) The Minister may cause any writing registered in the registry to be photographed and such photographic reproduction for the purposes of this Act or any Act authorizing registration in the registry is deemed to be the writing that was registered.
- Destruction of records (6) Subject to prescribed conditions, the registrar may authorize the destruction of any books, writings, records, cards, papers or forms that have been preserved in the registry for so long that it appears that they need not be preserved any longer.
Note: Such destruction would have to be in accordance with government policy and practice.
- Assignment of security interest 15.(1) Where a financing statement is registered and the secured party has assigned his interest in whole or in part, a financing change statement in the prescribed form may be registered.
- Assignee disclosed as secured party (2) Where no financing statement has been registered with respect to a security interest and the secured party has assigned his interest, a financing statement may be registered in which the assignee is disclosed as the secured party.
- Assignment of registration (3) After disclosure of an assignment or registration of a financing change statement under this section, the assignee is the secured party.
- Transfer of security interest 16. Where a financing statement has been registered with respect to a security interest and the debtor transfers his interest, the secured party may register a financing statement indicating the change.
- Subordination of security interest 17. Where a secured party has subordinated his interest to the interest of another person, a financing change statement may be registered at any time during the period that registration of the subordinated interest is effective.

Renewal of
registration

18. Where a financing statement has been registered with respect to a security interest, the registration may be renewed by registering a financing change statement at any time before expiry of the registration.

"court"

19.(1) In this section, "court" means a superior court of a province or the Federal Court of Canada.

Discharge of
registration

(2) Where a financing statement is registered and the security interest is released or partially released, the secured party shall discharge the registration, wholly or partially, as the case may require, by registering a financing change statement.

Demand for
financing
change
statement

(3) Where a financing statement is registered under this Act and,

(a) all the obligations with respect to the security interest to which it relates are performed;

(b) it is agreed to release part of the security interest upon payment or performance of certain of the obligations to which the security interest relates, then upon payment or performance of those obligations; or

(c) it purports to give the secured party a security interest in property of the debtor which the secured party does not have, or is not entitled to claim,

any person having an interest in the aircraft or accessions which is the subject of the financing statement or financing change statement may serve a written demand on the secured party demanding a financing change statement mentioned in subsection (2), and the secured party shall, within fifteen days after service of the demand, sign and deliver or send to the registry the financing change statement.

Application
to court

(4) Where a secured party fails to deliver the financing change statement demanded under subsection (3), a court, on application by the person making the demand and after notice to such persons as the court may direct, may order

(a) the registrar to remove the financing statement or financing change statement from the registry and

(b) the secured party to pay to the person making the demand an amount as payment for costs incurred and damages suffered by him.

Other changes
in registra-
tion

20. An amendment, in the prescribed form, to a financing statement or other writing registered under this Act may be registered at any time during the period that the registration of the amended writing is effective, and the amendment is effectively registered as to the change from the time of registration of the amendment.

Registration
life

21.(1) Subject to the regulations, registration under this Act of,

(a) a financing statement is effective for the length of time indicated on the statement; 1/

(b) a financing change statement renewing the registration is effective for the length of time indicated on the financing change statement; 2/

(c) any other financing change statement is effective for the remainder of the period for which the financing statement or financing change statement to which the first mentioned financing change statement relates is effective.

1/ and 2/ These two paragraphs are taken from the UPPSA 1982 and are intended, coupled with the appropriate regulation power (see s.31(i) of this draft), to authorize a system whereby the secured party may select the registration, or, in other words, to provide for variable registration. This may take the form of the Saskatchewan model which allows for variable registration periods in multiples of one year to a maximum of twenty-five years or infinity, but enabling legislation would then have to exist in the other provinces. Other models suggested were that the regulations would provide the registration periods of all Provinces and the Territories.

Removal from
records of
registry

(2) A financing statement and financing change statements referring to a financing statement, or information provided on a financing statement or financing change statement, as the case may require, may be removed from the records of the registry,

(a) when the statement is no longer effective;

(b) upon the receipt of a financing change statement discharging or partially discharging the financing statement;

(c) upon receipt of a court order compelling the discharge or partial discharge of a financing statement or financing change statement obtained pursuant to subsection 19(4) and subsection 26(5).

Non-abrogation
of certain
provisions
and rights

22. The provisions of this Act relating to registration of financing statements shall not be deemed to abrogate or supersede the substantive provisions of provincial law dealing with the creation of security interests, the rights of parties to a security agreement or the rights of other persons.

Requisition of
search

23.(1) Upon payment of the prescribed fee in the prescribed manner, any person may, in person at the office of the registry or by mail, telephone or telegraph message,

(a) requisition a search against the name of any individual debtor or business debtor or according to the registration marks assigned to the aircraft by the Department of Transport and obtain the results of the search;

(b) requisition the printed results of the search mentioned in paragraph (a);

(c) obtain a certified copy of any registered financing statement or financing change statement.

Registrar may
substitute
printed
search

(2) If verbal search results are requested and the results of the search are, in the opinion of the registrar, of such length to preclude verbal search results, the registrar may, after informing the person searching of his decision, forward by mail the printed results of the search.

Other manner
of requisitioning
searches

(3) Where so approved by the Minister, searches may be requisitioned and provided in a manner other than that provided in subsection (1).

Contents of
search
results

(4) The results of any search conducted under this section may contain information actively maintained for inquiries in the registry and may include information corresponding to search criteria similar to that provided by the person requisitioning the search.

- Printed search result prima facie proof (5) A printed search result issued under subsection (1) or (2), and certified by the registrar is receivable in evidence as prima facie proof of its contents without proof of his signature or official position.
- Certified copy prima facie proof (6) A copy of any registered financing statement or financing change statement certified by the registrar is receivable in evidence as prima facie proof for all purposes, without proof of his signature or official position.
- No constructive notice 24. Registration does not constitute constructive notice or knowledge of the contents of registered documents to third parties.
- When financing statement may be registered 25. Except as otherwise provided in this Act, a financing statement or a financing change statement may be registered at any time, and may be registered before a security agreement is executed or before a security interest is created.

INFORMATION FROM THE SECURED PARTY

- "court" 26.(1) In this section "court" means a superior court of a province or the Federal Court of Canada.
- Demand for information (2) A debtor, creditor, sheriff or person with a proprietary right in the aircraft or accessions may, by a demand in writing, containing an address for reply and sent or delivered to the secured party at the address set forth in the financing statement, or a more recent address if known, require the secured party to send or deliver to him at the address for reply or, if the demand is made by the debtor, to a person at any address specified by the debtor, any one or more of the following:
- (a) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness as of the date specified in the demand;
 - (b) a written approval or correction as of the date specified in the demand of the list of the aircraft and accessions attached to the demand;
 - (c) a written approval or correction as of the date specified in the demand of the amount of the indebtedness and of the terms of payment of the indebtedness;

(d) a true copy of the security agreement and amendments thereto;

(e) sufficient information as to the location of the agreement creating a security interest and any copy thereof to enable a person entitled to receive a true copy of that agreement, or his authorized representative, to inspect it, if he so desires.

Inspection
of agreement
creating a
security
interest

(3) The secured party, on the request of a person entitled to receive a true copy of the agreement creating a security interest, shall permit him, or his authorized representative, to inspect that agreement or a true copy thereof during normal business hours, at the location disclosed in the information provided pursuant to subsection (2).

Reply by
secured
party

(4) The secured party shall reply to a demand served under subsection (2) within thirty days after it is served and if, without reasonable excuse, he fails to do so, or his reply is incomplete or incorrect, the person who has served the demand is entitled, in addition to any other remedy provided by this Act, to apply, on notice to the secured party, to the court for an order requiring the secured party to comply with the demand.

Failure to
reply

(5) Where a secured party fails to comply with an order granted under subsection (4), the court, on application of the party who obtained the order, on notice to the secured party, may

(a) order any registration in the registry relating to the security interest of the secured party to be discharged;

(b) make any order that it considers necessary to ensure compliance with the order.

Disclosure of
successors in
interest

(6) Where the person receiving a demand under subsection (2) no longer has an interest in the obligation or aircraft or accessions he shall, within thirty days after he receives the demand, disclose the name and address of the latest successor in interest if known to him, and, if without reasonable excuse he fails to do so or his reply is incomplete or incorrect, subsections (4) and (5) apply with all necessary modifications.

Application
to court

(7) Upon application of the secured party or in an application under subsection (4), the court may make any order that is reasonable and just, including

(a) an order exempting the secured party in whole or in part from complying with the demand or extending the time for answering the demand; and

(b) an order as to costs.

Charges for
reply

(8) The secured party may require payment in advance of the charges prescribed for each reply to a demand under subsection (2), but the debtor is entitled to a reply without charge once every six months.

Certain docu-
ments need not
be supplied

(9) The secured party is not required to provide a copy of any financing statement or financing change statement registered.

Action against
registrar

27.(1) Subject to this section, any person who suffers loss or damage, as a result of his reliance on printed search results certified by the registrar that are incorrect because of an error in the operation of the registry, may bring an action against the registrar in the Federal Court for recovery of damages, but no award of damages to any single claimant shall exceed the prescribed amount.

Limitation
of actions

(2) No action for damages under this section lies against the registrar unless it is commenced within one year after the time the loss or damage was first discovered.

Class actions

(3) Any action for recovery of damages under this section brought by a person shall be brought as an action on behalf of all other persons who relied on the same printed search results, and the judgment in the action, except to the extent that it relates to the finding of the fact of reliance by each person and provides for subsequent determination of the amount of damages suffered by each person, constitutes a judgment between each person and the registrar in respect of an error or omission in the operation of the registry.

Idem

(4) An action for recovery of damages under this section brought by a trustee under a trust indenture or similar document or any person with an interest in a trust indenture or similar document shall be brought as an action on behalf of all persons with interests in the same trust indenture or similar document, and the judgment in the action, except to the extent that it provides for subsequent determination of the amount of damages suffered by each person, constitutes a judgment between each person and the registrar in respect of the error or omission.

Proof of
reliance

(5) In an action brought by a trustee under a trust indenture or similar document or by any person with an interest in a trust indenture or similar document, proof that each person relied on the printed search results is not necessary if it is established that the trustee relied on the printed search results, but no person is entitled to recover damages under this section if he knew at the time he acquired his interest that the printed search results relied on by the trustee were incorrect.

Total claims

(6) The total of all claims for compensation paid under subsections (3) and (4) in any single action shall not exceed the prescribed amount.

Powers of
Federal Court

(7) In proceedings under subsections (3) and (4), the Federal Court may make any order that it considers appropriate in order to give notice to members of the class.

Payment of
damages

(8) Subject to subsection (6), the Federal Court may order payment of all or a portion of the damages awarded to identified members of the class at any time after judgment, and the obligation of the registrar to satisfy the judgment is satisfied to the extent that payment is made.

Payment of
claim

(9) Upon a receipt of a report of the registrar setting forth the facts and a certificate of the registrar that in his opinion the claim is just and reasonable, the Minister may, without action brought, pay the amount of the claim against the registrar.

Payment of
award of
damages

(10) When an award of damages has been made in favour of the claimant and the time for appeal has expired or when an appeal is taken and it is disposed of in favour of the plaintiff, the Governor in Council shall authorize payment out of the Consolidated Revenue Fund in the manner and in the amount specified in the judgment.

Immunity from
action

(11) Notwithstanding the Crown Liability Act, no action shall be brought against the Crown in right of Canada, the registrar or any officer or employee of the registry for any act or omission of the registrar or an officer or employee of the registry in respect of the discharge or purported discharge of any duty or function under this or any other Act or under the regulations, other than as is provided in this section.

MISCELLANEOUS

Deemed registration for purpose of other Acts 28. Registration in the registry pursuant to this Act is deemed to be registration for the purpose of any other federal Act. [Note: For example, for the purpose of ss. 178(4) of the Bank Act. See further note on page 22 below.]

TRANSITIONAL APPLICATION OF ACT

Interpretation 29.(1) In this section:

"prior security interests" (a) "prior security interest" means an interest created under prior law which is a security interest within the meaning of this Act and to which this Act would have applied if it would have been force at the time of creation of the interest;

"Prior Law" (b) "prior law" means the federal law existing prior to the coming into force of this Act..

Transitional (2) This Act applies:

application
of Act to
security

(a) to every security interest created under federal
law after this Act comes into force;

interests
under federal
law

(b) subject to subsection (3), to every prior security interest that is not validly terminated in accordance with prior law when this Act comes into force;

(c) to a security interest arising under federal law
out of

(i) a renewal, extension, refinancing or consolidation arrangement occurring after this Act comes into force,

(ii) a revolving credit transaction entered into before and continuing after this Act comes into force.

priorities (3) The order of priorities:

(a) between security interests is determined by prior law, if all of the competing interests arose under prior law;

(b) between a security interest and the interest of a third party other than a security interest is determined by prior law, if the third party interest arose before this Act comes into force and the security interest arose under prior law.

Deemed
registration

(4) A prior security interest that, when this section comes into force, is covered by an unexpired filing or registration under prior law is deemed to have been registered under this Act and subject to this Act, such filing or registration continues for a period of two years from the date this Act comes into force and the filing or registration, as the case may be, may be further continued by registration of a financing statement renewing the registration under this Act.

Idem

(5) A prior security interest which under prior law had at the date of its creation a status equivalent to a validly created security interest registered under this Act without filing or registration under prior law, is deemed to be registered within the meaning of this Act as of the date the security interest was created and that registration continues for a period of two years from the date this Act comes into force, after which it is deemed to be unregistered unless actually registered under this Act.

Interpretation
"prior
security
interest"

30.(1) In this section, "prior security interest" means an interest created under provincial law which is a security interest within the meaning of this Act and to which this Act would have applied if it had been in force at the time of creation of the interest.

Transitional
application of
Act to secur-
ity interests
under
provincial law

(2) This Act applies to every security interest created under provincial law after this Act comes into force if provincial law so provides.

Deemed
registration

(3) A prior security interest that, when this Act comes into force, is covered by an unexpired filing or registration under provincial law is deemed to have been registered under this Act and, subject to this Act, such filing or registration continues for a period of two years from the day this Act comes into force and the filing or registration, as the case may be, may be further continued by registration of a financing statement renewing the registration under this Act.

Idem

(4) A prior security interest which, prior to this Act coming into force, had a status equivalent to a validly created security interest registered under this Act without filing or registration under prior law, is deemed to be registered within the meaning of this Act as of the date the security interest was created, and that registration continues for a period of two years from the date this Act comes into force, after which it is deemed to be unregistered unless actually registered under this Act.

REGULATIONS

Regulations

31. The Governor General in Council may make regulations

- (a) approving the form of the seal of the registrar;
- (b) prescribing the duties of the registrar and deputy registrars;
- (c) prescribing business hours for the registry;
- (d) respecting the registration system;
- (e) requiring the payment of fees and prescribing the amounts thereof and the manner of payment;
- (f) governing practice and procedure applicable to proceedings under this Act;
- (g) prescribing forms and providing for their use;
- (h) prescribing the information to be provided for the purpose of identifying an aircraft;
- (i) governing the right of a secured party to indicate the length of time during which a financing statement or a financing change statement renewing the financing statement shall be effective;
- (j) prescribing abbreviations, expansions or symbols that may be used in a financing statement, financing change statement or any other form authorized or required by this Act or in the recording or production of information from the registry;
- (k) requiring or permitting the use of a document to confirm the registration of any financing statement or statement change and permitting the amendment of

an error in registering on the part of the registrar or the registry and prescribing the limits of such amendments;

(l) prescribing the amounts of compensation payable under section 27;

(m) prescribing the amount of any charge to which the secured party is entitled under section 26;

(n) prescribing the conditions for conservation or destruction of books, writings, records, papers or forms in registry;

(o) any matter or thing that by this Act is to be prescribed.

CROWN

Act binds the
Crown

32. This Act binds the Crown in right of Canada.

COMMENCEMENT

Comes into
force

33. This Act or any part or section thereof comes into force on a day or days to be fixed by proclamation of the Governor General in Council.

Consequential change to the Aeronautics Act

CANCELLATION OF REGISTRATION OF AIRCRAFT

No cancellation of the registration of an aircraft for purposes of exportation from Canada may be made without the authority of each person in whose name a financing statement is registered in the registry established under the Central Aircraft Registry Act with respect to that aircraft.

Note on Section 28 (Deemed registration for purpose of other Acts)

The priority rules of the Federal Act, and, in particular, ss. 7 and 8 provide for priorities vis-à-vis other secured parties, transferees, execution creditors and the trustee in bankruptcy. However, there may be other interests that come into the picture which will be regulated by s. 178 of the Bank Act. The priority rules of s. 178 are considerably broader than those set out in the Federal Act. Also, s. 179 of the

Bank Act states the bank's priority position in much broader terms. Section 179(1) provides that when a bank has registered its notice it has "priority over all rights subsequently acquired in, on or in respect of such property...". Further, under s. 178(2) a bank has "the same rights and powers as if the bank had acquired a warehouse receipt or bill of lading in which such property is described". Section 186(2) provides that a warehouse receipt or bill of lading acquired by a bank vests in the bank "all the right and title to the warehouse receipt or bill of lading and to the goods, wares and merchandise covered thereby". It can be seen, therefore, that the priority position of the bank under the new Act is quite specific whereas under the Bank Act it is stated in very general and broad terms. The result is that if protection is to be sought for a Bank Act interest in an aircraft against the claims of any person other than that specifically named in s. 7 or 8 of the Federal Act, the bank's interest would have to be registered as provided in s. 178(4). This may mean that in order to get complete protection it will be necessary to register under both Acts. Section 28 of the Federal Act is intended to remedy this difficulty by means of a deemed registration provision.

5/05/83

APPENDIX BPROVINCIAL BILL

An Act concerning the registration, recognition and enforcement of security interests in aircraft.

SHORT TITLE

Short title 1. This Act may be cited as the Security Interests in Aircraft Act..

INTERPRETATION

Definitions 2. In this Act,

"accessions" (a) "accessions" means goods that are installed in or affixed to an aircraft;*

"aircraft" (b) "aircraft" means any machine used or designed for navigation of the air but does not include a machine designed to derive support in the atmosphere from reactions against the earth's surface of air expelled from the machine and, unless otherwise provided, means an aircraft registered as to nationality in Canada pursuant to the Aeronautics Act;

"Contracting State" (c) "Contracting State" means a State party to the Convention on the International Recognition of Rights in Aircraft signed at Geneva on the nineteenth of June 1948;

"court" (d) "court" means, unless otherwise provided, a superior court established by the province;

"debtor" (e) "debtor" means

(i) a person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the aircraft or accessions and includes where the context requires

*The expression "accessions" may cause difficulty in the civil law context.

- 2 -

(a) a lessee under a lease;

(b) a transferee or or successor to a debtor's interest in the aircraft or accessions; or

(ii) where a debtor is not the owner of the aircraft or accessions, an owner thereof in any provision dealing with the aircraft or accessions;

"Central Aircraft Registry"

(f) "central aircraft registry" means the registry established by the Central Aircraft Registry Act (Canada);

"financing statement"

(g) "financing statement" means a statement, in the form prescribed pursuant to the Central Aircraft Registry Act (Canada) that is required or permitted to be registered pursuant to this Act, and financing statement includes a financing change statement unless the context requires otherwise;

"foreign aircraft"

(h) "foreign aircraft" means an aircraft registered as to nationality in a Contracting State other than Canada;

"foreign registry"

(i) "foreign registry" means the public record of a Contracting State other than Canada in which rights in aircraft are recorded;

"lease for a term of more than one year"

(j) "lease for a term of more than one year" includes

(i) a lease for a term of one year or less that is automatically renewable or that is renewable at the option of one of the parties or by agreement for one or more terms, the total of which may exceed one year;

(ii) a lease initially for an indefinite term or a term of less than one year, where the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the goods leased for a period in excess of one year after the date he first acquired possession of the goods, and the lease becomes a lease for more than one year as soon as the lessee's possession extends beyond one year;

but does not include a lease by a lessor who is not engaged in the business of leasing aircraft or accessions;

- 3 -

- "registered" (k) "registered" means, unless the context requires otherwise, registered according to the Central Aircraft Registry Act (Canada);
- "secured party" (l) "secured party" means
- (i) a person who has a security interest, and
 - (ii) the trustee, if a security agreement is embodied in or evidenced by a trust indenture or similar document;
- "security agreement" (m) "security agreement" means an agreement that creates or provides for a security interest, and includes a writing evidencing a security agreement when the context permits;
- "security interest" (n) "security interest" means an interest in a Canadian aircraft or accessions that secures payment or performance of an obligation, and includes the interest of a lessor under a lease of an aircraft or accession for a term of more than one year notwithstanding that such a lease may not secure payment or performance of an obligation;
- "value" (o) "value" means the granting of credit, the loaning of money or a binding agreement to do so and includes an antecedent debt or liability.

APPLICATION

Act applies to agreement creating a security interest 3. Subject to section 5, this Act applies to every agreement without regard to its form and without regard to the person who has title to the aircraft or accessions that in substance creates a security interest in an aircraft or accessions under the law of this province.

Act does not apply to certain aircraft 4. This Act does not apply with respect to any military or customs aircraft that is the property of Her Majesty in right of Canada or to any police aircraft that is the property of Her Majesty in right of Canada or of a province.

CONFLICT OF LAWS

Validity of security interest 5.(1) The validity of a security interest shall be governed by the law of the jurisdiction where the debtor is located at the time the security interest is created.

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Location of
debtor

(2) For the purposes of subsection (1), a debtor is deemed to be located at his place of business if he has one, at his chief executive office if he has more than one place of business and otherwise at his principal residence.

Procedural
matters

(3) Notwithstanding subsection (1)

(a) procedural matters affecting the enforcement of the right of a secured party in respect of aircraft or accessions are governed by the law of the jurisdiction which the aircraft or accessions is located at the time of the exercise of those rights;

Substantive
matters

(b) substantive matters affecting the enforcement of the rights of a secured party in respect of aircraft or accessions are governed by the proper law of the contract between the secured party and the debtor.

WHEN SECURITY INTEREST IS CREATED

When security
interest
created

6. A security interest is created when

(a) value is given;

(b) the debtor has rights in the aircraft or accessions; and

(c) in the case of an aircraft, the secured party is in possession of it; or

(d) in the case of an aircraft or accessions, the debtor has signed a security agreement that contains a description of the aircraft or accessions, as the case may be, sufficient to enable the aircraft or accessions to be identified.

PRIORITIES

Steps to
priority

7.(1) This section applies to security interests created under the law of this province.

(2) Notwithstanding any other Act, no security interest, security agreement or notice of a security interest is required to be registered, filed or recorded except as provided herein in order to be valid or to take priority as provided in this Act.

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(3) In order to take priority as provided in sections 8, 9 and 10

(a) a security interest must be validly created and enforceable against third parties, and

(b) a financing statement with respect to the security interest must be registered

regardless of the order of occurrence.

Subordination
of security
interest

8. A security interest is subordinate to the interests of

(a) a person who, for the purposes of enforcing a judgment,

(i) causes the aircraft or accessions to be seized under legal process, or

(ii) obtains a court order affecting the aircraft or accessions;

(b) a representative of creditors but only for the purpose of enforcing the rights of persons mentioned in paragraph (a) and a trustee in bankruptcy; and

(c) a transferee of an interest in the aircraft or accessions who is not a secured party and who acquires his interest for value and without actual knowledge of the security interest

if the security interest is not registered in the central aircraft registry at the time the interests of the persons mentioned in paragraphs (a) to (c) arose.

PRIORITY OF REGISTERED SECURITY INTERESTS

Priority of
registered
security
interests

9.(1) If no other provision of this Act is applicable,

(a) priority between registered security interests in the same aircraft is determined by the order of registration;

(b) a registered security interest has priority over an unregistered security interest in the same aircraft;

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(c) priority between unregistered security interests in the same aircraft is determined by the order of creation of the interests.

Priority of
assignee of
security
interest

(2) An assignee of a security interest has the same priority with respect to registration of the security interest as the assignor had at the time of the assignment.

Application
of priority

(3) The priority which a security interest in an aircraft has under this section applies to

(a) all advances made under the security agreement providing for the security interest whether or not the secured party is obligated to make the advances, and

(b) advances or expenditures made by the secured party for the protection, maintenance, preservation or repair of the aircraft.

Meaning of
purchase
money
security
interest

(4) In subsection (5), purchase money security interest means

(a) a security interest that is taken or reserved in an aircraft to secure payment of all or part of the purchase price of the aircraft,

(b) a security interest in an aircraft taken by a person who gives value for the purpose of enabling the debtor to acquire rights in or to the aircraft, to the extent that the value is applied to acquire such rights,

(c) the interest of a lessor of an aircraft under a lease for a term of more than one year.

Priority of
purchase
money
security
interest

(5) A purchase money security interest has priority over any other security interest in an aircraft given by the same debtor if the purchase money security interest is registered at the time the debtor receives possession of the aircraft.

Application
of priority
rules

(6) The priority rules of this section and sections 8 and 10, apply to security interests whether created under provincial or federal law.

Priority of
interest in
accession
goods

10.(1) A security interest taken in goods

(a) before they become an accession, subject to paragraph (b) has priority over an interest in the aircraft existing at the date the goods become an accession;

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(b) before they become an accession, does not have priority over an interest of a person with a security interest in the aircraft at the time they become an accession to the extent of subsequent advances made or contracted by such person after the goods become an accession and before the security interest in the accessions is registered as prescribed;

(c) after they become an accession, has priority as to the goods over an interest subsequently acquired in the aircraft if the security interest in the goods is registered as prescribed before such interest is acquired;

(d) after they become an accession, does not have priority over an interest in the aircraft existing at the time the security interest in the accession was taken unless the holder of the interest in the aircraft consented to the security interest in the accession.

(2) The priority rules of section 9 apply mutatis mutandis to competing security interests in accessions.

SALE OF FOREIGN AIRCRAFT

Sale
proceedings

11.(1) Notwithstanding any law of this province, no person may sell in this province any foreign aircraft for the purpose of forcibly exercising or otherwise enforcing his rights under a contract or under a judgment of any court, unless that person

(a) makes an application to a superior court for an order authorizing the sale, which application shall be accompanied by a certified extract from the applicable foreign registry of all rights recorded therein with respect to the aircraft;

(b) obtains an order from such court

(i) fixing the time and place of the sale, which time shall be not less than six weeks from the date the order is made, and

(ii) determining the place and manner in which public notice of the sale shall be given, and

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(c) notifies each person in whose name a right is recorded in the foreign registry with respect to the aircraft of the time and place of the sale, which notification shall, not less than one month before the time of the sale, be given by registered mail addressed to each such person at his latest address as shown in the foreign registry.

Recognition
of rights

(2) The court to which an application is made pursuant to this section shall recognize:

- (a) rights of property in aircraft;
- (b) rights to acquire aircraft by purchase coupled with possession of the aircraft;
- (c) rights to possession of aircraft under leases of six months or more;
- (d) mortgages, hypothèques and similar rights in aircraft which are contractually created as security for payment of an indebtedness;

provided that such rights

(i) have been constituted in accordance with the law of the Contracting State in which the aircraft was registered as to nationality at the time of their constitution; and

(ii) are regularly recorded in a public record of the Contracting State in which the aircraft is registered as to nationality.

Regularity of
recordings in
Contracting
States

(3) The regularity of successive recordings in different Contracting States shall be determined in accordance with the law of the Contracting State where the foreign aircraft was registered as to nationality at the time of each recording.

Priority of
rights

(4) The priority of rights in a foreign aircraft shall be determined according to the law of the Contracting State where such rights are recorded.

Special claims

(5) In the event that any claims in respect of

(a) compensation due for salvage of a foreign aircraft, or

(b) extraordinary expenses indispensable for the preservation of a foreign aircraft

give rise, under the law of the Contracting State where the operations of salvage or preservation were terminated, to a right conferring a charge against the aircraft, such right shall be recognized and shall take priority over all other rights in the aircraft.

Idem

(6) The rights enumerated in paragraph (5) shall be satisfied in the inverse order of the dates of the incidents in connexion with which they have arisen.

Idem

(7) The said rights shall not be recognized after expiration of three months from the date of termination of the salvage or preservation operations unless, within this period,

(a) the right has been noted in the registry of the Contracting State where the aircraft is registered as to nationality, and

(b) the amount has been agreed upon or judicial action on the right has been commenced, it being understood that, as far as judicial action is concerned, the law of the forum shall determine the contingencies upon which the three-month period may be interrupted or suspended.

Preference
for costs

(8) Costs legally chargeable under the law of this province, which are incurred in the common interest of creditors in the course of proceedings leading to a sale under this section, shall be paid out of the proceeds of sale before any claim including those given preference by subsection (5).

Extension of
priority

(9) The priority of a right mentioned in subsection (2), paragraph (d), extends to all sums thereby secured, except that, the amount of interest included shall not exceed that accrued during the three years prior to the proceedings leading to a sale under this section together with that accrued during such proceedings.

Liens and
charges

(10) Notwithstanding any other law of this province, no lien or charge other than those mentioned in subsection (2) in respect of a foreign aircraft and no lien or charge of Her Majesty in right of (province) in respect of that aircraft shall have priority over the interests mentioned in subsections (2) and (5) respectively and recorded with respect to the aircraft in a foreign registry of the Contracting State in which the aircraft is registered as to nationality.

- 10 -

Satisfaction
of priority
rights

(11) No foreign aircraft shall be sold in circumstances to which this section applies unless all rights having priority over the claim of the person at whose instance the sale was ordered are satisfied by the proceeds of sale or assumed by the purchaser.

Transfer of
aircraft

(12) Where pursuant to this section any court authorizes the sale of a foreign aircraft, the order so authorizing the sale shall upon payment of the proceeds into court

(a) vest in some person named by the court the right to transfer the foreign aircraft free of all interests in the foreign registry with respect to that aircraft; and

(b) fix in accordance with this section the order in which the claims against the aircraft are to be satisfied out of the proceeds of the sale.

Annulment
of sale

(13) Any sale of a foreign aircraft taking place in contravention of the requirements of subsection (1) may be annulled upon demand to a superior court made within six months from the date of the sale by any person suffering damage as the result of such contravention.

APPLICATION OF THE CENTRAL AIRCRAFT REGISTRY ACT (CANADA)

Application of
the Central
Aircraft
Registry Act
(Canada)

12. The provisions of the Central Aircraft Registry Act (Canada) dealing with the registration of security interests and discharge of such registration apply to security interests to which this Act applies and are deemed to be incorporated in this Act.

NO CONSTRUCTIVE NOTICE

No
constructive
notice

13. Registration does not constitute constructive notice or knowledge of the contents of registered documents to third parties.

INFORMATION FROM THE SECURED PARTY

14(1) In this section

"court"

"court" means a superior court of a province or the Federal Court of Canada.

"creditor"

"creditor" includes an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver, a receiver-manager, an executor, an administrator, a committee, a tutor or curator.

- 11 -

Demand for
information

(2) A debtor, creditor, sheriff or person with a proprietary right in the aircraft or accessions may, by a demand in writing, containing an address for reply and sent or delivered to the secured party at the address set forth in the financing statement, or a more recent address if known, require the secured party to send or deliver to him at the address for reply or, if the demand is made by the debtor, to a person at any address specified by the debtor, any one or more of the following:

(a) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness as of the date specified in the demand;

(b) a written approval or correction as of the date specified in the demand of the list of the aircraft and accessions attached to the demand;

(c) a written approval or correction as of the date specified in the demand of the amount of the indebtedness and of the terms of payment of the indebtedness;

(d) a true copy of the security agreement and amendments thereto;

(e) sufficient information as to the location of the agreement creating a security interest and any copy thereof to enable a person entitled to receive a true copy of that agreement, or his authorized representative, to inspect it, if he so desires.

Inspection of
agreement
creating a
security
interest

(3) The secured party, on the request of a person entitled to receive a true copy of the agreement creating a security interest, shall permit him, or his authorized representative, to inspect that agreement or a true copy thereof during normal business hours, at the location disclosed in the information provided pursuant to subsection (2).

Reply by
secured
party

(4) The secured party shall reply to a demand served under subsection (2) within thirty days after it is served and if, without reasonable excuse, he fails to do so, or his reply is incomplete or incorrect, the person who has served the demand is entitled, in addition to any other remedy provided by this Act, to apply, on notice to the secured party, to the court for an order requiring the secured party to comply with the demand.

- 12 -

Failure
to reply

(5) Where a secured party fails to comply with an order granted under subsection (4), the court, on application of the party who obtained the order, on notice to the secured party, may

(a) order any registration in the registry relating to the security interest of the secured party to be discharged;

(b) make any order that it considers necessary to ensure compliance with the order.

Disclosure of
successors in
interest

(6) Where the person receiving a demand under subsection (2) no longer has an interest in the obligation or aircraft or accessions he shall, within thirty days after he receives the demand, disclose the name and address of the latest successor in interest if known to him, and , if without reasonable excuse he fails to do so or his reply is incomplete or incorrect, subsections (4) and (5) apply with all necessary modifications.

Application
to court

(7) Upon application of the secured party or in an application under subsection (4), the court may make any order that is reasonable and just, including

(a) an order exempting the secured party in whole or in part from complying with the demand or extending the time for answering the demand; and

(b) an order as to costs.

Charges for
reply

(8) The secured party may require payment in advance of the charges prescribed for each reply to a demand under subsection (2), but the debtor is entitled to a reply without charge once every six months.

Certain docu-
ments need
not be
supplied

(9) The secured party is not required to provide a copy of any financing statement or financing change statement registered in the registry.

TRANSITIONAL APPLICATION OF ACT

Interpretation 15.(1) In this Section:

"prior
security
interest"

(a) "prior security interest" means an interest created under prior law which is a security interest within the meaning of this Act and to which this Act would have applied if it would have been in force at the time of creation of the interest;

"prior law"

(b) "prior law" means law of this province existing prior to the coming into force of this Act.

Transitional
application
of Act

(2) This Act applies:

(a) to every security interest created under the law of this province after this Act comes into force;

(b) subject to subsection (3), to every prior security interest that is not validly terminated in accordance with prior law when this Act comes into force;

(c) to a security interest arising out of

(i) a renewal, extension, refinancing or consolidating arrangement occurring after this Act comes into force,

(ii) a revolving credit transaction entered into before and continuing after this Act comes into force.

Priorities

(3) The order of priorities:

(a) between security interests is determined by prior law, if all of the competing interests arose under prior law;

(b) between a security interest and the interest of a third party other than a security interest is determined by prior law, if the third party interest arose before this Act came into force and the security interest arose under prior law.

Deemed
registration

(4) A prior security interest that, when this section comes into force, is covered by an unexpired filing or registration under prior law is deemed to have been registered under this Act and, subject to this Act, such filing or registration continues for a period of two years from the date this Act comes into force and the filing or registration, as the case may be, may be further continued by registration of a financing statement renewing the registration under this Act.

- 14 -

Idem

(5) A prior security interest which, under prior law, had a status equivalent to a validly created security interest registered under this Act without filing or registration under prior law, is deemed to be registered within the meaning of this Act as of the date the security interest was created, and that registration continues for a period of two years from the date this Act comes into force, after which it is deemed to be unregistered unless actually registered under this Act.

CROWN

Act binds the
Crown

16. This Act binds the Crown.

COMMENCEMENT

Comes into
force

17. This Act or any part or section thereof comes into force on a day or days to be fixed by proclamation of the Lieutenant-Governor in Council.

STATES WHICH HAVE SIGNED AND DEPOSITED WITH ICAO
AN INSTRUMENT OF RATIFICATION OF, OR ADHERENCE TO, THE
CONVENTION ON THE INTERNATIONAL RECOGNITION OF RIGHTS IN AIRCRAFT
OPENED FOR SIGNATURE AT

GENEVA ON 19 JUNE 1948(1)

<u>States</u>	<u>Date of Signature</u>	<u>Date of Deposit of Instruments of Ratification or Adherence</u>	<u>Effective Date</u>
Algeria		10 August 1964	8 November 1964
Argentina	19 June 1948	31 January 1958	1 May 1958
Australia	9 June 1950		
Belgium	19 June 1948		
Brazil	19 June 1948	3 July 1953	1 October 1953
Cameroon, United Republic of		23 July 1969	21 October 1969
Central African Republic		2 June 1969	31 August 1969
Chad		14 February 1974	15 May 1974
Chile	19 June 1948	19 December 1955	18 March 1956
China	19 June 1948		
Colombia	19 June 1948		
Congo, People's Republic of		3 May 1982	1 August 1982
Cuba	20 June 1949	20 June 1961	18 September 1961
Denmark	3 January 1949 -	18 January 1963	18 April 1963
Dominican Republic	19 June 1948		
Ecuador		14 July 1958	12 October 1958
Egypt, Arab Republic of		10 September 1969	9 December 1969
El Salvador		14 August 1958	12 November 1958
Ethiopia		7 June 1979	5 September 1979
France	19 June 1948	27 February 1964	27 May 1964
Gabon		14 January 1970	14 April 1970
Germany, Federal Rep. of(2)		7 July 1959	5 October 1959
Greece	19 June 1948	23 February 1971	24 May 1971
Guinea		13 August 1980	11 November 1980
Haiti		24 March 1961	22 June 1961
Iceland	19 June 1948	6 February 1967	7 May 1967
Iran	18 March 1950		
Iraq		12 January 1981	12 April 1981
Ireland	30 November 1948		
Italy	19 June 1948	6 December 1960	6 March 1961
Ivory Coast		23 August 1965	21 November 1965
Kuwait(3)		27 November 1979	25 February 1980
Lao, People's Dem. Rep.		4 June 1956	2 September 1956
Lebanon		11 April 1969	10 July 1969
Libyan Arab Jamahiriya		5 March 1973	4 June 1973

Geneva Convention
19 June 1948

<u>States</u>	<u>Date of Signature</u>	<u>Date of Deposit of Instruments of Ratification or Adherence</u>	<u>Effective Date</u>
Luxembourg		16 December 1975	15 March 1976
Madagascar		9 January 1979	9 April 1979
Mali		28 December 1961	28 March 1962
Mauritania		23 July 1962	21 October 1962
Mexico(4)	19 June 1948	5 April 1950	17 September 1953
Netherlands, Kingdom of the	19 June 1948	1 September 1959	30 November 1959
Niger		27 December 1962	27 March 1963
Norway	3 January 1949	5 March 1954	3 June 1954
Pakistan	21 August 1951	19 June 1953	17 September 1953
Paraguay		26 September 1969	25 December 1969
Peru	19 June 1948		
Philippines		22 February 1978	23 May 1978
Portugal	19 June 1948		
Rwanda		17 May 1971	15 August 1971
Seychelles		16 January 1979	16 April 1979
Sweden	3 January 1949	16 November 1955	14 February 1956
Switzerland	19 June 1948	3 October 1960	1 January 1961
Thailand		10 October 1967	8 January 1968
Togo		2 July 1980	30 September 1980
Tunisia		4 May 1966	2 August 1966
United Kingdom	19 June 1948		
United States of America(6)	19 June 1948	6 September 1949	17 September 1953
Venezuela	19 June 1948		

- (1) In accordance with Article XX, the Agreement came into force on 17 September 1953, between the United States of America and Pakistan.
- (2) Acceptance of the Convention applies also to the Land Berlin
- (3) It is understood that accession to the Convention on International Recognition of Rights in Aircraft (Geneva, 1948), does not mean, in any way recognition of Israel by the State of Kuwait. Furthermore, no treaty relation will arise between the State of Kuwait and Israel.
- (4) Translation by ICAO Secretariat: "The Mexican Government expressly reserves the rights belonging to it to recognize the priorities granted by Mexican laws to fiscal claims and claims arising out of work contracts over any other claims. Therefore, the priorities referred to in the Convention on the International Recognition of Rights in Aircraft, signed at Geneva, shall be subject, within the national territory, to the priorities accorded by Mexican laws to fiscal claims and claims arising out of work contracts".
- (5) Acceptance of the Convention applies only to the Kingdom of the Netherlands in Europe.
- (6) Statement by the Government of the United States of America dated 1 July 1950: "that it considers the reservation attached by Mexico to its ratification to be in the nature of an amendment which would, to a considerable degree, vitiate the protection offered by the Convention to persons having property rights in aircraft. Consequently, the Government of the United States of America is unable to accept the reservation made by the Government of Mexico and will not regard the Convention on the International Recognition of Rights in Aircraft, as ratified by Mexico, as having entered into force between the United States of America and Mexico on July 4, 1950".

APPENDIX D - ANNEXE D

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CONFERENCES FEDERALES-PROVINCIALES DES
PROCUREURS GENERAUX, DES MINISTRES RESPONSABLES
DE LA JUSTICE PENALE ET DES MINISTRES RESPONSABLES
DU SYSTEME CORRECTIONNEL

Rapport du Groupe de travail
fédéral-provincial sur le registre
central des sûretés réelles sur aéronef

Groupe de travail fédéral-provincial

OTTAWA (Ontario)
Les 11 et 12 juillet 1983

RAPPORT DU GROUPE DE TRAVAIL FEDERAL-PROVINCIAL
SUR LE REGISTRE CENTRAL DES SURETES REELLES SUR AERONEF

Ottawa,
Le 5 mai 1983



Department of Justice
Canada
Ottawa, Canada
K1A 0H8

Ministère de la Justice
Canada

Le 7 juin 1983

M. Roger Tassé, c.r.
Sous-ministre de la Justice
Pièce 346
Édifice de la Justice
239, rue Wellington
Ottawa, K1A 0N8

Monsieur,

À la réunion des sous-ministres de la Justice de juin 1981, il a été décidé d'instituer un groupe de travail fédéral-provincial en vue de la création d'un registre central des droits sur aéronef. Je fus invité à présider le groupe de travail, qui a rédigé un rapport transmis aux provinces dans le but d'obtenir leurs observations au début de juillet 1982. Le 2 décembre 1982, les sous-ministres ont prolongé le mandat du groupe de travail afin qu'il puisse préparer, en vue d'une consultation fédérale-provinciale au niveau des sous-ministres, un projet de loi fédérale et un projet de loi provinciale sur un registre central des droits sur aéronef et un rapport sur les aspects financiers et administratifs de cette question. Le groupe de travail s'étant acquitté de sa tâche, je suis heureux de vous faire parvenir ce rapport.

Le groupe de travail a tenu trois sessions formelles (15 septembre 1981, 18-20 novembre 1981 et 24-26 mars 1982). Après avoir rencontré des groupes intéressés au domaine du financement des aéronefs, il a rédigé un rapport que le sous-ministre fédéral de la Justice a transmis à ses homologues des provinces, le 7 juillet 1982, dans le but de recueillir leurs observations. Lors d'une réunion informelle des membres du groupe de travail, tenue à Toronto les 3 et 4 novembre 1982, on en est venu à la conclusion qu'il était possible d'élaborer un plan législatif relatif au registre central des droits sur aéronef qui comprendrait à la fois une loi fédérale ainsi qu'une loi provinciale type. Cependant, on a fait remarquer que, pour mettre le plan législatif en vigueur, il faudrait que toutes les provinces adoptent la loi provinciale type. Comme vous le savez, le 2 décembre 1982, les sous-ministres ont demandé au groupe de travail de poursuivre son travail et de préparer, avant le 31 mars 1983, en vue d'une consultation fédérale-provinciale au niveau des sous-ministres, un projet de loi fédérale et un projet de loi provinciale sur un registre central des droits sur aéronef et un rapport sur les aspects financiers et administratifs de cette question.

Le groupe de travail a tenu sa quatrième session formelle du 31 janvier au 2 février 1983 et a rédigé un projet de loi fédérale prévoyant la création d'un registre central des droits sur aéronef et un projet de loi provinciale type prévoyant l'utilisation de ce registre. Par la suite, le ministère fédéral de la Justice a retenu les services du professeur R.C.C. Cuming, c.r., du College of Law de l'Université de la Saskatchewan, à titre d'expert-conseil chargé d'examiner à fond le projet de loi fédérale et le projet de loi provinciale type qu'a rédigés le groupe de travail, ainsi que les modifications qui leur ont été apportées par suite des observations recueillies auprès des divers membres du groupe de travail après la quatrième session. Après cette consultation, le groupe de travail a approuvé, au moyen d'une vérification effectuée par voie de correspondance, les deux projets de loi révisés. En raison de la consultation avec le professeur Cuming et d'une nouvelle consultation avec les membres du groupe, la date de présentation du rapport a dû être reportée du 31 mars 1983 au 5 mai 1983.

J'espère que le groupe de travail a rempli son mandat en ce sens qu'il a rédigé un rapport qui comprend non seulement un plan législatif fédéral-provincial (c'est-à-dire un avant-projet de loi fédérale et un avant-projet de loi provinciale) prévoyant la création d'un registre central des droits sur aéronef, mais qui traite en outre des aspects financiers et administratifs de cette question.

À cet égard, la loi fédérale prévoirait la création et la structure administrative d'un registre central des droits sur aéronef dans lequel seraient enregistrés les avis concernant les droits sur les aéronefs immatriculés au Canada.

La loi provinciale type disposerait que:

- a) Aucun droit sur un aéronef immatriculé au Canada ne doit, pour être valide ou prendre rang conformément à la loi provinciale, être enregistré ailleurs que dans le registre central des aéronefs créé par la loi fédérale.
- b) Les droits sur un aéronef prennent rang suivant leurs dates respectives d'enregistrement au registre central des aéronefs.

La Convention relative à la reconnaissance internationale des droits sur aéronef (Genève, 1948) serait mise en application au moyen d'une disposition prévoyant que, lorsqu'un aéronef d'un État partie à la Convention est vendu dans une province dans le but d'assurer l'exécution d'un contrat ou d'un jugement rendu par un tribunal, les droits énumérés dans la Convention seraient reconnus dans cette province.

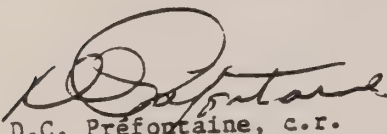
Il est important de noter que les lois sur les sûretés mobilières qui sont présentement en vigueur continueraient de s'appliquer aux aéronefs, sauf que c'est dans le registre central des aéronefs que seraient inscrits les droits sur aéronef.

Le groupe de travail estime que cette répartition est valable et permet d'éviter que le plan législatif ne soit réduit à néant à la demande de particuliers pour des motifs d'ordre constitutionnel.

Selon le groupe de travail, le volume des données d'entrée et de sortie du registre devrait être assez faible. Par conséquent, le registre ne pourra s'autofinancer avec les seuls frais perçus et nécessitera toujours d'autres ressources. Les prévisions des ressources nécessaires à l'établissement et au fonctionnement du registre figurent au paragraphe 19 du rapport du groupe de travail.

De l'avis du groupe de travail, l'avant-projet de loi fédérale et l'avant-projet de loi provinciale type pourraient servir de fondement pour la création d'un registre central des droits sur aéronef et, en outre, prévoir la mise en application effective de la Convention de Genève de 1948.

Je vous prie d'agréer l'expression de mes sentiments les meilleurs,


D.C. Préfontaine, c.r.
Sous-ministre adjoint

5/5/83

RAPPORT DU GROUPE DE TRAVAIL FEDERAL-PROVINCIAL
SUR LE REGISTRE CENTRAL DES SURETES REELLES SUR AERONEF

Quatrième Session

Regina, 31 janvier au 2 février 1983

Ottawa,
Le 5 mai 1983

(i)

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RAPPORT DU GROUPE DE TRAVAIL FEDERAL-PROVINCIAL
SUR LE REGISTRE CENTRAL DES SURETES REELLES SUR AERONEF*

(Quatrième session, Regina, 31 janvier au 2 février 1983)

I. INTRODUCTION

1. La décision d'instituer un groupe de travail fédéral-provincial en vue de la création d'un registre central des sûretés réelles sur aéronef a été prise à la réunion des sous-ministres de la Justice, au mois de juin 1981.** Le groupe de travail a rédigé un rapport dans lequel figure la liste des points susceptibles d'être inclus dans un plan législatif pour la création d'un registre central. Le rapport a été transmis aux provinces dans le but de recueillir leurs commentaires au début de juillet 1982. Le 2 décembre 1982, les sous-ministres ont demandé au groupe de travail de préparer, avant le 31 mars 1983, en vue d'une consultation fédérale-provinciale au niveau des sous-ministres, des projets de loi fédéraux et provinciaux sur un registre central des sûretés réelles sur aéronef et un rapport sur les aspects financiers et administratifs de cette question. Le présent rapport traite ces deux points.

II. ETAT DE LA QUESTION

1. Problèmes découlant de l'absence d'un registre central des sûretés réelles sur aéronef

2. L'absence d'un registre central pour l'enregistrement des droits sur aéronef au Canada pose de sérieux problèmes

* Bien qu'il se soit d'abord proposé d'appeler le registre "registre national des aéronefs", le groupe de travail a retenu le concept d'un "registre central". En conséquence, dans le présent rapport, le mot "national" est remplacé par le mot "central" dans tous les cas où il convient de le faire.

** La liste des membres du groupe de travail figure à l'annexe D.

aux fabricants, aux exploitants et aux propriétaires d'aéronefs, ainsi qu'aux institutions financières qui financent l'achat d'aéronefs. Ces problèmes découlent notamment du fait que chaque province traite de façon différente l'enregistrement des droits mobiliers sur les aéronefs. En outre, pour protéger un droit sur un aéronef, plusieurs provinces exigent que celui-ci soit réenregistré lorsque l'aéronef passe d'une province à une autre. Par exemple, à l'heure actuelle, un droit enregistré dans une province à l'égard d'un aéronef canadien ne sera pas nécessairement reconnu dans une autre province ou n'aura pas nécessairement priorité sur un droit enregistré ultérieurement dans une autre province. De plus, une sûreté réelle sur un aéronef canadien ne sera pas nécessairement reconnue ou n'aura pas forcément priorité à l'étranger dans le cas où cet aéronef ferait l'objet d'une vente forcée. De même, les droits sur les aéronefs immatriculés à l'étranger qui viennent au Canada ne seront pas nécessairement reconnus ou n'auront pas forcément priorité ici.

2. La solution serait de créer un registre central

3. Les facteurs susmentionnés nuisent sérieusement à la protection des investissements financiers dans les aéronefs. A cause de cette difficulté, on a réclamé la création d'un registre central où seraient enregistrés tous les droits sur aéronef. Le principal avantage de la création d'un registre central serait d'assurer aux titulaires de sûretés réelles sur aéronef la reconnaissance de celles-ci partout au Canada.

4. La création d'un registre central assurerait également la reconnaissance, à l'étranger, des droits sur les aéronefs canadiens et, inversement, la reconnaissance, au Canada, des droits sur les aéronefs étrangers. Il

suffirait que le Canada devienne partie (après l'entrée en vigueur des lois assurant sa mise en oeuvre) à la Convention relative à la reconnaissance internationale des droits sur aéronef, signée à Genève en 1948. Au 31 mars 1983, le nombre des Etats parties était de quarante-sept.* La Convention prévoit la reconnaissance internationale de certains droits régulièrement inscrits sur un seul registre public de l'Etat contractant où l'aéronef est immatriculé. Les projets de loi S-9 (1973) et S-5 (1974-1975) déposés au Parlement avaient pour but d'assurer la mise en oeuvre de la Convention et l'établissement d'un registre, mais ils n'ont jamais été adoptés. Comme la question s'est de nouveau élevée, les provinces et l'industrie ont été consultées au début de 1981; au mois de juin de la même année, le présent groupe de travail était nommé.

III. SEANCES DU GROUPE DE TRAVAIL

1. Elaboration du plan législatif

5. Le groupe de travail, dont le président est Me D.C. Préfontaine, c.r., avocat général, Section de l'élaboration de la politique et des modifications au droit pénal,** ministère fédéral de la Justice, et dont le président intérimaire est Me Gerald F. FitzGerald, c.r., a tenu quatre sessions (15 septembre 1981, 18-20 novembre 1981, 24-26 mars 1982, et 31 janvier - 2 février 1983). Après avoir rencontré des groupes intéressés au domaine du financement des aéronefs, le groupe de travail a rédigé, lors de sa troisième session, un rapport que le sous-ministre fédéral de la Justice a transmis à ses homologues des provinces, le 7 juillet 1982, dans le

* La liste des Etats qui ont signé, ratifié ou adhéré à la Convention figure à l'annexe C.

** Il était récemment sous-ministre adjoint intérimaire, Direction de la planification et de l'élaboration de la politique.

but de recueillir leurs commentaires. Le rapport comprend une liste des points susceptibles d'être inclus dans un plan législatif visant à la création d'un registre central des sûretés réelles sur aéronef, et un exposé de la répartition des éléments de cette liste entre l'autorité législative fédérale et l'autorité législative des provinces. (L'aspect constitutionnel du plan législatif est exposé aux paragraphes 6 et 7 qui figurent ci-dessous.) Le groupe de travail a tenté d'élaborer un plan législatif qui comprend à la fois des lois fédérales et des lois provinciales. Dans son rapport, il signale que le projet de création d'un registre central des sûretés réelles sur aéronef nécessite une étude de questions complexes en matière de sûretés mobilières. Néanmoins, le groupe de travail conclut que le plan législatif décrit dans la liste et réparti selon les compétences fédérales et provinciales constitue de façon générale un instrument valable, malgré sa complexité, pour créer un registre national.

2. Aspects constitutionnels du plan législatif

6. On peut prétendre que, du fait de sa compétence en matière d'aéronautique, le gouvernement fédéral a le pouvoir de légiférer sur la création d'un registre central, où les sûretés réelles et autres droits sur aéronef pourraient être enregistrés. En se fondant sur cette interprétation, certaines associations importantes dans le domaine financier ont prétendu que l'enregistrement des droits sur aéronef devrait se faire par un système exclusivement fédéral. Dans cette optique, un système fédéral permettrait de pallier les incertitudes inhérentes au système actuel selon lequel les droits sur aéronef sont enregistrés auprès des autorités provinciales. Cependant, les provinces ont déjà prétendu, lors de l'étude du projet de loi S-5 en 1974-1975, que le système fédéral proposé pour l'enregistrement des droits sur

aéronef relevait de la propriété et des droits civils et, par conséquent, de la compétence des provinces. Etant donné ces divergences de vues sur la constitutionnalité d'un système fédéral, le groupe de travail a entrepris de préparer le meilleur plan législatif possible, sans égard, tout d'abord, à la question de savoir à quel niveau de gouvernement, fédéral ou provincial, revient la compétence législative du plan législatif.

7. Le groupe de travail a finalement abordé le problème constitutionnel. Comme l'objectif est d'assurer une plus grande sécurité aux bailleurs de fonds pour la vente et l'achat d'aéronefs, le groupe de travail estime que le plan législatif choisi devrait être inattaquable sur le plan constitutionnel. En vertu du plan législatif, la loi fédérale établirait la structure administrative du registre central et disposerait que les sûretés réelles découlant du droit fédéral doivent être inscrites dans ce registre. La loi provinciale prévoirait l'inscription au registre central des sûretés réelles découlant du droit provincial ainsi que les priorités et les procédures visant à faire respecter des droits. Selon le groupe de travail, cette répartition est valable et permet d'éviter que le plan législatif ne soit réduit à néant à la demande de particuliers pour des motifs constitutionnels.

3. Éléments essentiels du plan législatif

8. La loi fédérale prévoirait la création d'un registre central des sûretés réelles sur aéronef dans lequel seraient enregistrés les avis concernant les droits sur les aéronefs immatriculés au Canada.

9. La loi provinciale type disposerait que:

(a) aucune sûreté réelle sur un aéronef immatriculé

au Canada ne doit, pour être valide ou pour prendre rang conformément à la loi provinciale, être enregistrée ailleurs que dans le registre central des aéronefs créé par la loi fédérale,

(b) les droits sur un aéronef prennent rang suivant leurs dates respectives d'enregistrement au registre central des aéronefs,

(c) la Convention relative à la reconnaissance internationale des droits sur aéronef (Genève, 1948) serait mise en oeuvre au moyen d'une disposition prévoyant que, lorsqu'un aéronef d'un Etat partie à la Convention est vendu dans une province dans le but d'assurer l'exercice ou le respect d'un droit découlant d'un contrat ou d'un jugement rendu par un tribunal, les droits énumérés dans la Convention seraient reconnus dans cette province.

Il est important de noter que les lois intéressant les sûretés mobilières qui sont présentement en vigueur continueraient de s'appliquer aux aéronefs, sauf que c'est dans le registre central des aéronefs que seraient inscrits les droits sur aéronef.

4. Possibilité d'élaborer un plan législatif qui comprend à la fois des lois fédérales et des lois provinciales

10. Lors d'une réunion informelle de certains membres du groupe de travail (regroupant des fonctionnaires fédéraux et des fonctionnaires de l'Alberta, de l'Ontario et du Québec), tenue à Toronto les 3 et 4 novembre 1982, on en est venu à la conclusion qu'il était possible d'élaborer un plan législatif relatif au registre central des sûretés réelles sur aéronef qui comprendrait à la fois une loi fédérale ainsi qu'une loi provinciale type. Cependant, on a fait remarquer que, pour mettre le plan législatif en

vigueur, il faudrait que toutes les provinces adoptent la loi provinciale type quant au fond sinon quant à la forme exacte.

IV. REDACTION DES AVANT-PROJETS DE LOI

11. Lors de sa quatrième session, le groupe de travail s'est fondé sur la liste des points annexée au rapport de sa troisième session et les observations faites sur ces points par les provinces, notamment la Colombie-Britannique, l'Ontario et la Saskatchewan pour rédiger un avant-projet de loi fédérale et une loi provinciale type.

Après la quatrième session, le ministère fédéral de la Justice a retenu les services du professeur R.C.C. Cuming, c.r., du College of Law de l'Université de la Saskatchewan, à titre d'expert-conseil chargé d'examiner à fond le projet de loi fédérale et le projet de loi provinciale type qu'a rédigés le groupe de travail, ainsi que les modifications qui leur ont été apportées par suite des commentaires recueillis auprès de divers membres du groupe de travail. C'est en tenant compte de ces commentaires ainsi que des suggestions qu'a faites le professeur Cumming après avoir consulté Mme G. Jackson, la représentante de la Saskatchewan au sein du groupe, que le groupe de travail a approuvé l'avant-projet de loi fédérale qui figure à l'annexe A et l'avant-projet de loi provinciale type qui figure à l'annexe B au moyen d'une vérification effectuée par voie de correspondance. Un des membres estimait toutefois que les dispositions portant sur la vente des aéronefs étrangers étaient rédigées en des termes beaucoup trop généraux compte tenu des objectifs que l'on se proposait d'atteindre.

12. La loi fédérale se limiterait, dans la mesure du possible, aux questions administratives et de procédure alors que le droit, quant au fond, exception faite des sûretés réelles découlant du droit fédéral, enterait dans la loi provinciale. Cette approche permettrait d'éviter les complications qui pourraient résulter de l'inclusion de dispositions détaillées sur les sûretés mobilières, particulières aux aéronefs. Par ailleurs, même si les questions de droit, quant au fond, relevaient autant que possible de la loi provinciale, seul un nombre restreint de dispositions concernant les sûretés mobilières devrait être inclus dans la loi provinciale type, puisqu'il suffirait d'apporter quelques modifications aux dispositions actuelles sur les sûretés mobilières, pour que l'aéronef soit considéré comme un seul et même bien meuble. Ces modifications porteraient notamment sur des questions comme le droit d'accession et l'utilisation du registre central dans le but d'établir l'ordre de priorité des droits.

13. Bien que la loi fédérale et la loi provinciale type puissent prévoir la renonciation à des privilèges, à des charges et à d'autres droits de même nature, cette renonciation ne s'appliquerait que dans les cas relativement rares où un aéronef étranger (c'est-à-dire un aéronef d'un Etat partie à la Convention de Genève) a fait l'objet d'une vente forcée au Canada. Elle ne s'appliquerait pas dans le cas où un aéronef canadien aurait fait l'objet d'une vente au Canada.

14. Eventuellement, il faudrait établir des lignes directrices pour des questions comme celles du coût afférent au maintien du registre central et du paiement d'indemnités en cas d'erreur ou d'omission. Ces questions sont étudiées aux titres VI et VII du présent rapport.

V. CONSULTATIONS

15. Le groupe de travail avait en sa possession les observations écrites des provinces et bénéficiait de la participation active de cinq provinces, soit l'Alberta, la Colombie-Britannique, l'Ontario, le Québec et la Saskatchewan. Il a rencontré les représentants de l'Association canadienne du transport aérien, de l'Association des compagnies financières canadiennes et de l'Association des banquiers canadiens. L'Association du Barreau canadien, avec laquelle le groupe de travail s'est mis en rapport, a demandé qu'on la tienne au fait de l'évolution de la situation. De plus, lors de sa quatrième session, le groupe de travail a bénéficié des conseils du professeur R.C.C. Cuming, c.r., du College of Law de l'Université de la Saskatchewan.

VI. REGISTRE CENTRAL DES AERONEFS

1. Incidences financières et administratives

16. Le présent titre rassemble quelques observations sur le type de registre central que le ministère fédéral des Transports propose de créer. Il renferme notamment des prévisions en ce qui concerne le coût de la mise en oeuvre du registre et son coût annuel de maintien.

2. Type de registre envisagé

17. Le registre envisagé comporterait un système centralisé de dépôt d'avis, qui fonctionnerait à l'aide d'un ordinateur et qui serait situé à Ottawa. Les avis de sûretés réelles sur les aéronefs seraient inscrits dans le registre au moyen d'un bordereau de financement, préalablement rempli par celui qui demande l'enregistrement. Les préposés à l'enregistrement s'occuperaient d'entrer sur ordinateur les données qui figurent sur le bordereau, lequel serait conservé dans les dossiers pour permettre au public de le consulter. Par la suite, le public, ou encore l'industrie, aurait accès aux données contenues dans l'ordinateur, en téléphonant, en écrivant, ou en s'adressant personnellement au bureau où se trouve le registre. Ce service de renseignements serait offert gratuitement, mais il y aurait des frais pour obtenir toute copie d'une liste mécanographique, qu'elle soit ou non certifiée conforme. Les documents et les services fournis seraient bilingues.

18. Le volume des données d'entrée et de sortie du registre devrait être assez faible; la charge annuelle de travail prévue résulterait d'environ 1 000 enregistrements de nouveaux aéronefs, de 4 500 changements d'enregistrements d'aéronefs et de la suppression de 450 aéronefs du registre des aéronefs civils canadiens. Par conséquent, le registre ne pourra s'autofinancer avec les seuls frais et nécessitera toujours d'autres ressources.

3. Prévisions des ressources nécessaires

19. A première vue, les ressources nécessaires à l'établissement et au fonctionnement du système seraient les suivantes:

(a) Coûts en capital (dollars de 1983)

(i)	Meubles et matériel de bureau	\$35,000
(ii)	Terminaux, imprimantes et programmation	\$300,000
		\$335,000

(b) Locaux

(i) Bureaux

1092 pi²

(ii)	Salles réservées aux consultations par le public	300 pi ²
(iii)	Salle réservée aux demandes de renseignements du public	200 pi ²
(c)	<u>Ressources en personnel</u>	
(i)	Superviseur - AS-3	\$ 27,982
(ii)	Commis - CR-5(1)	25,390
(iii)	Commis - CR-4(3)	67,098
(iv)	Commis - CR-2(2)	<u>29,680</u>
		\$ 150,330

Remarque: Le coût annuel prévu pour le maintien du registre après sa mise sur pied se détaille comme suit:

- (a) Amélioration et entretien de l'ordinateur, etc. - \$50,000
- (b) Traitements du personnel - \$150,330. Voir le par. 19(c) ci-dessus.
- (c) Coût annuel total - \$200,330.

VII. DEDOMMAGEMENT EN CAS D'ERREUR OU D'OMISSION

1. Actions intentées contre le registrateur

20. La loi uniforme de 1982 sur les sûretés mobilières (LUSM de 1982), dont l'art. 51 et très détaillé, porte que toute personne qui subit une perte ou des dommages (TRADUCTION) "parce qu'elle s'est fiée à un résultat écrit ou imprimé d'une recherche, incorrect à cause d'une erreur due au fonctionnement du système d'enregistrement" peut intenter une action contre le registrateur. On y prévoit aussi diverses autres possibilités, notamment le recours collectif et l'action intentée par un fiduciaire en vertu d'un acte de fiducie ou par une personne ayant un droit dans un acte de fiducie. Il existe des dispositions semblables dans la Loi sur les sûretés mobilières de l'Ontario (S.R.O. 1980, chap. 375, art. 45), dans celle du Manitoba (1973, chap. 5 et ses modifications, art. 45) et dans celle de la Saskatchewan (1979-1980, chap. P-6.1 et ses modifications, art. 53). De plus, les lois de l'Alberta,

bien que rédigées en des termes différents, offre des garanties semblables en ce qui concerne le registre central de cette province.

2. Tribunaux

21. Sans entrer dans tous les détails, il convient de noter que les quatre LSM susmentionnées prévoient comme suit le renvoi à un tribunal: LUSM de 1982 - il incombe à chaque province de déterminer le tribunal, Manitoba - juge de la cour de comté, Ontario - maître de la Cour suprême, et Saskatchewan - Cour du Banc de la Reine. Dans tous les cas, il est possible d'interjeter appel devant une instance supérieure. En outre, en Saskatchewan, le ministre des Finances peut, sur autorisation du procureur général, payer le montant de la réclamation présentée à l'encontre du registrateur et ce, sans qu'une action ne soit intentée. Cette autorisation est donnée à condition que le registrateur présente un rapport énonçant les faits ainsi qu'un certificat selon lequel, à son avis, la réclamation est juste et raisonnable (par. 53(9)).

3. Montant maximal du dédommagement

22. Le montant maximal du dédommagement est fixé dans les LSM du Manitoba et de l'Ontario, mais la LUSM et la LSM de la Saskatchewan renvoient au "montant prescrit", c'est-à-dire le montant prescrit par règlement. Dans certains cas, on prévoit qu'un montant soit fixé pour une réclamation faite par une seule personne, et qu'un montant global plus élevé soit fixé pour le cas d'un recours collectif ou d'une réclamation faite au nom de plusieurs personnes. En résumé, les montants maximaux sont établis comme suit:

LUSM de 1982	Montant prescrit pour une personne (par. 51(1)). Montant global prescrit (par. 51(6)).
- Manitoba	\$25 000 par personne (par. 45(1)). Montant global maximal de \$200 000 dans le cas de sûretés corporatives (par. 45(2)).

- Ontario Montant total maximal déterminé par le montant dont dispose le Fonds d'assurance sur les sûretés mobilières, qui constitue un compte du Fonds du revenu consolidé (par. 45(3)).
- Saskatchewan \$40 000 par personne. Montant global maximal de \$400 000. Il s'agit des montants prescrits par les par. 53(1) et 53(6) respectivement.

4. Provenance des montants versés à titre de dédommagement

23. Au Manitoba et en Saskatchewan, les montants versés à titre de dédommagement sont prélevés sur le Fonds du revenu consolidé. Quant à l'Ontario, elle possède un fonds d'assurance pour les sûretés mobilières, lequel constitue un compte spécial du Fonds du revenu consolidé et est maintenu grâce à la mise de côté de \$0.20 pour chaque droit acquitté. En janvier 1983, le montant total du Fonds dépassait \$3 500 000. En Ontario, il n'y a eu qu'une réclamation faite contre le Fonds depuis 1976, ou depuis que la LSM de l'Ontario est entrée en vigueur. A cette occasion, le montant accordé s'élevait à \$6 470. Voir à ce sujet l'arrêt Federal Business Development Bank v. Registrar of Personal Property Security, 38 O.R. (2d) 471 (1983).

5. Conclusions quant au dédommagement

24. Le groupe de travail signale que l'article 51 de la LUSM de 1982 renferme des dispositions détaillées quant au dédommagement qui peut être obtenu dans le cas où le registrateur commet une erreur ou une omission, et qu'il a incorporé ces dispositions dans la loi fédérale en y apportant les modifications nécessaires. A cet égard, afin d'assurer une certaine souplesse, le montant versé à titre de dédommagement pourrait être un "montant prescrit" tandis que le tribunal compétent serait la Cour fédérale.

VIII. CONCLUSIONS

25. De l'avis du groupe de travail, l'avant-projet de loi fédérale et l'avant-projet de loi uniforme provinciale pourraient servir de fondement pour la création d'un registre central des sûretés réelles sur aéronef et, en outre, prévoir la mise en application effective de la Convention de Genève de 1948.

26. Au Canada, l'enregistrement des droits sur les aéronefs canadiens au registre central des aéronefs assurerait, pour la première fois, la reconnaissance nationale de la priorité de tels droits, à compter du moment de leur enregistrement au nouveau registre, et raffermirait ainsi la position des parties aux opérations financières concernant les aéronefs.

27. Sur le plan international, la création d'un registre central des aéronefs aurait pour effet de centraliser les sources canadiennes où sont enregistrés les droits sur les aéronefs canadiens, et d'établir leur ordre de priorité. Par conséquent, un tribunal étranger qui aurait à rendre un jugement relativement à la vente forcée d'un aéronef canadien pourrait y avoir accès aux fins de vérifier quels droits sont enregistrés à l'égard de cet aéronef. En outre, la reconnaissance des droits dont il est question dans la Convention et de leur ordre de priorité serait ainsi assurée, conformément à ladite Convention.

28. Parallèlement, l'adoption d'une loi provinciale prévoyant la reconnaissance, par les tribunaux canadiens, des droits sur les aéronefs étrangers enregistrés dans un registre étranger assurerait la reconnaissance, par les tribunaux étrangers, des droits sur les aéronefs canadiens enregistrés au registre central canadien des aéronefs.

IX. RECOMMANDATION.

29. Le groupe de travail recommande que l'avant-projet de loi fédérale et l'avant-projet de loi provinciale soient présentés, pour obtenir leurs observations:

- (1) aux autorités fédérales et provinciales compétentes;
- (2) aux autorités compétentes des secteurs appropriés de l'aviation canadienne, et des communautés financière et juridique,

et que, au moment où il sera décidé de donner suite aux deux avant-projets, les lois soient rédigées de façon souple afin de ne pas entraver les modifications que peut subir le droit des sûretés mobilières, que ce soit au niveau fédéral ou provincial, le tout conformément à la mise en application de la Convention de Genève. Donc, il est important de garder la souplesse des avant-projets actuels.

5/05/83

ANNEXE APROJET DE LOI FEDERALE

Projet de loi

Loi instituant un registre central des sûretés réelles sur aéronef et habilitant le Canada à se conformer à la Convention relative à la reconnaissance internationale des droits sur aéronef

TITRE ABREGE

- Titre abrégé. 1. Loi sur le registre central des aéronefs.
- DEFINITIONS
2. Les définitions suivantes s'appliquent à la présente loi.
- "accessions" Bien installés sur un aéronef ou qui y sont fixés.*
- "accessions"
- "aéronef" "aéronef" Toute machine utilisée ou conçue pour la navigation aérienne, mais ne comprend pas une machine conçue pour se maintenir dans l'atmosphère grâce à la réaction, sur la surface de la terre, de l'air expulsé par la machine. Sauf disposition contraire de la présente loi, sont visés par la présente définition les aéronefs immatriculés au Canada.
- "aéronef étranger" "aéronef étranger". Aéronef immatriculé dans un Etat contractant autre que le Canada.
- "foreign aircraft"
- "bail d'une durée de plus d'un an" "bail d'une durée de plus d'un an" S'entend en outre
- i) d'un bail d'une durée d'un an ou moins qui est renouvelable automatiquement ou qui est renouvelable au choix de l'une des parties ou sur consentement pour une ou plusieurs périodes dont le total peut dépasser un an;
- ii) d'un bail consenti initialement pour une durée indéterminée ou pour moins d'un an, lorsque le preneur, du consentement du bailleur, conserve la possession ininterrompue ou sensiblement ininterrompue des biens loués pendant une période supérieure à un an après la date où il a initialement acquis possession des biens, et que le bail se transforme en un bail d'une durée de plus d'un an dès que le
- "lease for a term of more than one year"

*Le mot "accessions" pourrait poser des problèmes dans le contexte du droit civil.

preneur reste en possession des biens loués pendant plus d'un an.

Le bail d'une durée de plus d'un an ne s'entend toutefois pas du bail consenti par un bailleur dont l'entreprise ne consiste pas à louer des biens.

'bordereau de financement" 'financing statement"	"bordereau de financement" Document rédigé en la forme prescrite dont l'enregistrement est requis ou permis par la présente loi; s'entend en outre du modificatif d'un bordereau de financement, sauf si le contexte s'y oppose.
'convention de sûreté" 'security agreement"	"convention de sûreté" Convention créant ou prévoyant une sûreté réelle; s'entend en outre d'un écrit constatant l'existence d'une convention de sûreté si le contexte le permet.
'créancier" 'creditor"	"créancier" S'entend en outre d'un cessionnaire pour le bénéfice des créanciers, d'un syndic de faillite, d'un séquestre, d'un exécuteur, d'un administrateur, d'un tuteur ou d'un curateur.
'créancier garanti" 'secured party"	"créancier garanti" Désigne (i) le titulaire d'une sûreté réelle, et (ii) le fiduciaire, dans le cas où une convention de sûreté est comprise ou constatée dans un contrat de fiducie ou dans un document semblable.
'débiteur" 'debtor"	"débiteur" Désigne (i) la personne tenue à l'exécution de l'obligation garantie, qu'elle possède ou non l'aéronef ou les accessions en cause ou qu'elle ait ou non des droits sur ceux-ci, et comprend en outre, si le contexte l'exige, a) un preneur à bail; b) le cessionnaire des droits du débiteur sur un aéronef ou sur des accessions, et celui qui succède au débiteur dans ces droits; ou (ii) lorsque le débiteur n'en est pas le propriétaire, le propriétaire de l'aéronef et des accessions et ce, dans toute disposition qui traite de l'aéronef ou des accessions.
'enregistré" 'registered"	"enregistré" Enregistré dans le registre central des aéronefs, sauf si le contexte s'y oppose.
'Etat contractant" 'Contracting State"	"Etat contractant" Etat partie à la Convention relative à la reconnaissance internationale des droits sur aéronef signée à Genève le dix-neuvième jour du mois de juin de l'an mil neuf cent quarante-huit.

loi provinciale" "provincial law"	"loi provinciale" Une loi applicable d'une province ou d'un territoire du Canada.
"Ministre" "Minister"	"Ministre" Le ministre des Transports.
"prescrit" "prescribed"	"prescrit" Prescrit par le règlement.
"registra- teur" "registrar"	"registrateur" Le registrateur nommé au registre central des aéronefs en application de l'article 12.
"registre" "registry"	"registre" Le registre central des aéronefs.
"registre étranger" "foreign registry"	"registre étranger." Le registre public d'un Etat contractant autre que le Canada dans lequel les droits sur aéronef sont inscrits.
"sûreté réelle" "security interest"	"sûreté réelle" Droit sur un aéronef canadien ou sur ses accessions qui garantit le paiement ou l'exécution d'une obligation; ce droit s'entend en outre du droit du bailleur qui a consenti un bail d'une durée de plus d'un an, même si ce bail ne garantit pas le paiement ni l'exécution d'une obligation.

OBJET

Objet

3. L'objet de la présente loi est de prévoir la création d'un registre central des sûretés réelles sur un aéronef ou sur ses accessions, et de prévoir l'exécution des obligations du Canada en vertu de la Convention relative à la reconnaissance internationale des droits sur aéronef signée à Genève le dix-neuf juin 1948.

APPLICATION

Application
de la loi

4. Sauf les dispositions de l'article 10, la présente loi s'applique:

- a) A toute convention de sûreté créant une sûreté réelle sur aéronef ou accessions conformément au droit fédéral.
- b) A l'enregistrement des sûretés réelles sur aéronef ou accessions constituées conformément aux droits provinciaux et fédéraux.

Son appli-
cation à
certains
aéronefs

5. La présente loi ne s'applique pas aux aéronefs des services douaniers ni aux aéronefs militaires qui appartiennent à Sa Majesté du chef du Canada, ni aux aéronefs des services de la police qui appartiennent à Sa Majesté du chef du Canada ou d'une province.

RANG PRIORITAIRE

Mesures
visant à
assurer le
rang prio-
ritaire

6. (1) Le présent article s'applique aux sûretés réelles créées en application de toute loi du Parlement du Canada.

(2) Par dérogation à toute autre loi, aucune sûreté réelle ou convention de sûreté, et aucun avis de sûreté réelle, n'ont à être inscrits, déposés ou enregistrés, sauf en conformité de la présente loi, pour être valide et pour avoir le rang prioritaire prévu par celle-ci.*

(3) Pour jouir du rang prioritaire prévu par les articles 7, 8 et 9,

- a) la sûreté réelle doit être validement créée et opposable aux tiers, et
 - b) la sûreté réelle doit faire l'objet de l'enregistrement d'un bordereau de financement,
- indépendamment de l'ordre dans lequel se produisent ces événements.

Sûretés
réelles
non enre-
gistrées

7. La sûreté réelle a un rang inférieur au droit

- a) d'une personne qui, dans le but d'exécuter un jugement,
 - (i) fait saisir l'aéronef ou les accessions par voie légale, ou
 - (ii) obtient, d'un tribunal, une ordonnance touchant l'aéronef ou les accessions;
 - b) du mandataire des créanciers mais uniquement aux fins de donner effet aux droits des personnes mentionnées à l'alinéa a) et à ceux du syndic de faillite; et
 - c) du cessionnaire d'un droit sur l'aéronef ou les accessions qui n'est pas un créancier garanti et qui acquiert son droit à titre onéreux et sans connaître l'existence de la sûreté réelle;
- si la sûreté réelle n'est pas inscrite au registre central des aéronefs au moment où prend naissance le droit des personnes mentionnées aux alinéas a) à c).

Rang priori-
taire des
sûretés
réelles
enregis-
trées

8. (1) Lorsqu'aucune autre disposition de la présente loi ne s'applique

- a) le rang prioritaire des sûretés réelles inscrites relativement au même aéronef se détermine en fonction de la date de leur inscription;
- b) la sûreté réelle inscrite relativement à un aéronef a un rang supérieur à la sûreté réelle sur ce même aéronef qui n'est pas inscrite;

*Pour une disposition sur l'enregistrement présumé" aux fins de l'application de toute autre loi fédérale", voir l'article 28 ci-dessous.

c) le rang prioritaire des sûretés réelles sur un même aéronef qui ne sont pas inscrites se détermine en fonction de la date de leur création.

Rang prioritaire de la sûreté réelle qui a fait l'objet d'une cession (2) Le rang prioritaire accordé à une sûreté réelle à la suite de son inscription au registre central des aéronefs n'est pas modifié par la cession de la sûreté.

Application du rang prioritaire (3) Le rang prioritaire accordé à une sûreté réelle sur aéronef en application du présent article s'applique

a) à toutes les avances consenties en vertu d'une convention de sûreté prévoyant une sûreté réelle, indépendamment du fait que le créancier garanti soit ou non tenu de consentir ces avances, et

b) à toutes les avances consenties ou à toutes les dépenses engagées par le créancier garanti pour protéger, entretenir, conserver et réparer l'aéronef.

Sens de l'expression "sûreté d'achat" (4) Pour l'application du paragraphe (5), l'expression "sûreté d'achat" signifie

a) une sûreté réelle que prend ou se réserve le vendeur d'un aéronef dans le but de garantir le paiement de la totalité ou d'une partie du prix de vente de l'aéronef,

b) une sûreté réelle sur un aéronef que prend une personne qui donne valeur* dans le but de permettre au débiteur d'acquiescer des droits sur l'aéronef, dans la mesure où cette valeur sert effectivement à l'acquisition de ces droits,

c) le droit d'un bailleur qui loue un aéronef en vertu d'un bail d'une durée de plus d'un an.

* La définition suivante figure à l'article 2 du projet de loi provinciale:

o) "valeur" Ouverture de crédit, prêt d'argent ou obligation irrévocable à cet effet; s'entend en outre d'une dette ou d'une obligation antérieures.

Rang prioritaire de la sûreté d'achat (5) Une sûreté d'achat a un rang supérieur à toute autre sûreté réelle sur aéronef donnée par le même débiteur si la sûreté d'achat est inscrite à la date où le débiteur prend possession de l'aéronef.

Application des règles concernant le rang prioritaire (6) Les règles concernant le rang prioritaire que prévoient les dispositions du présent article et des articles 7 et 9 s'appliquent aux sûretés réelles créées en application du droit provincial ou fédéral.

Rang prio-
ritaire des
sûretés
réelles
grevant les
accessions

9. (1) La sûreté réelle qui grève des biens

a) avant que ces biens ne deviennent des accessions a, sous réserve de l'alinéa b), un rang supérieur à un droit sur l'aéronef créé avant la date à laquelle les biens sont devenus des accessions;

b) avant que ces biens ne deviennent des accessions n'a pas un rang supérieur au droit d'une personne qui a une sûreté réelle sur l'aéronef à la date à laquelle les biens deviennent des accessions dans la mesure où cette personne consent ou engage des avances après que les biens soient devenus des accessions et avant que la sûreté réelle sur les accessions ne soit inscrite;

c) après que ces biens soient devenus des accessions a, en ce qui concerne les biens, un rang supérieur au droit sur l'aéronef acquis subséquemment, si la sûreté réelle sur les biens est inscrite avant que ce droit ne soit acquis;

d) après que ces biens soient devenus des accessions n'a pas un rang supérieur à un droit sur l'aéronef créé avant la date à laquelle la sûreté réelle sur les accessions ne soit donnée, à moins que le titulaire du droit sur l'aéronef n'ait consenti à ce que la sûreté réelle soit donnée à l'égard des accessions.

(2) Les règles concernant le rang prioritaire prévues à l'article 9 s'appliquent mutatis mutandis aux sûretés réelles grevant les mêmes accessions.

VENTE DES AERONEFS ETRANGERS

Formalités

10. (1) Par dérogation à toute disposition contraire d'une autre loi, nul ne peut procéder, au Canada, à la vente forcée d'un aéronef étranger aux fins d'exercer les droits qui sont les siens en vertu d'un contrat ou d'une décision judiciaire, sans avoir

a) demandé, comme il convient, à une cour supérieure d'une province ou à la Cour fédérale du Canada, une ordonnance autorisant la vente, cette demande étant accompagnée d'un extrait certifié énonçant tous les droits inscrits au registre étranger approprié relativement à l'aéronef en question;

b) obtenu une ordonnance de cette cour

(i) fixant le lieu et la date de la vente, qui ne doit pas avoir lieu moins de six semaines après la date de l'ordonnance, et

(ii) déterminant où et de quelle façon doit être donné l'avis public de la vente; et

c) notifié de la date et du lieu de la vente chaque titulaire des droits sur l'aéronef en question inscrits au registre étranger, cet avis devant être adressé au

moins un mois avant la date de la vente, par courrier recommandé, à chaque titulaire à sa dernière adresse portée audit registre.

Reconnais-
sance des
droits

(2) La cour saisie de la demande visée au présent article doit reconnaître

- a) le droit de propriété sur aéronef,
 - b) le droit pour le détenteur d'un aéronef d'en acquérir la propriété par voie d'achat,
 - c) le droit d'utiliser un aéronef en exécution d'un contrat de location consenti pour une durée de six mois au moins,
 - d) l'hypothèque, le "mortgage" et tout droit similaire sur un aéronef créé conventionnellement en garantie du paiement d'une dette,
- à condition que de tels droits soient:

(i) constitués conformément à la loi de l'Etat contractant où l'aéronef est immatriculé lors de leur constitution et

(ii) régulièrement inscrits sur le registre public de l'Etat contractant où l'aéronef est immatriculé.

Détermi-
nation de
la régula-
rité des
inscrip-
tions

(3) La régularité des inscriptions successives dans différents Etats contractants où l'aéronef étranger est métérminée d'après la loi de l'Etat contractant où l'aéronef étranger est immatriculé au moment de chaque inscription.

Priorité
des droits
sur un
aéronef
étranger

(4) Le rang prioritaire des droits sur un aéronef étranger est déterminé conformément à la loi de l'Etat contractant où les droits sont inscrits.

Priorité
des
créances
relatives
au sauve-
tage et
aux frais
extraor-
dinares

(5) Les créances afférentes:

a) aux rémunérations dues pour sauvetage de l'aéronef étranger,

b) aux frais extraordinaires indispensables à la conservation de l'aéronef,

sont préférables à tous autres droits et créances grevant l'aéronef, à la condition d'être privilégiés et assortis d'un droit de suite au regard de la loi de l'Etat contractant où ont pris fin les opérations de sauvetage ou de conservation.

Idem

(6) Les créances énumérées au paragraphe (5) prennent rang dans l'ordre chronologique inverse des événements qui les ont fait naître.

Idem	<p>(7) Lesdits droits ne devront pas être reconnus à l'expiration du délai de trois mois après le sauvetage ou les opérations de conservation à moins qu'au cours dudit délai:</p> <p>a) la créance privilégiée ne fasse l'objet d'une mention au registre de l'Etat contractant où l'aéronef est immatriculé; et</p> <p>b) le montant de la créance ne soit fixé amiablement ou qu'une action judiciaire concernant cette créance ne soit introduite; il est entendu que dans ce cas la loi du tribunal saisi détermine les causes d'interruption ou de suspension du délai.</p>
Priorité particulière accordée aux frais	<p>(8) Dans les ventes forcées d'un aéronef étranger au Canada conformément au présent article, les frais légalement exigibles selon la loi et qui sont occasionnés dans l'intérêt commun des créanciers au cours de la procédure d'exécution en vue de la vente sont remboursés sur le produit de la vente avant toutes autres créances même celles qui sont privilégiées aux termes du paragraphe (5).</p>
Priorité accordée aux sommes garanties	<p>(9) La priorité qui s'attache aux droits mentionnés au paragraphe (2) alinéa d) s'étend à toutes les sommes garanties. Toutefois, le montant des intérêts inclus ne doit pas être supérieur à la somme des intérêts échus au cours des trois années antérieures à la procédure en vue de la vente prévue au présent article, et des intérêts échus au cours de cette procédure.</p>
Privilèges et charges	<p>(10) Par dérogation à toute disposition contraire d'une autre loi, aucun privilège et aucune charge grevant un aéronef étranger, sauf ceux qui sont mentionnés au paragraphe (2), et aucun privilège et aucune charge de Sa Majesté du chef du Canada grevant cet aéronef ne sont préférables aux droits mentionnés aux paragraphes (2) et (5) respectivement et inscrits relativement à l'aéronef dans le registre étranger de l'Etat contractant dans lequel est immatriculé cet aéronef.</p>
Extinction de tous les droits préférables	<p>(11) Aucune vente forcée d'un aéronef étranger ne peut être effectuée dans des circonstances auxquelles le présent article s'applique si les droits préférables à ceux du créancier saisissant ne peuvent être éteints grâce au produit de la vente ou ne sont pris en charge par l'acquéreur.</p>
Ordonnance du tribunal	<p>(12) Lorsqu'un tribunal autorise la vente d'un aéronef étranger en application du présent article, l'ordonnance en question doit, sur versement du produit de la vente au tribunal,</p> <p>a) assigner à une personne nommément désignée par le tribunal le droit de transférer la propriété de l'aéronef étranger purgée de tous les droits inscrits au registre à l'égard de cet aéronef; et</p> <p>b) fixer conformément au présent article l'ordre dans lequel seront acquittées avec le produit de la vente les créances visant l'aéronef.</p>

annulation la vente (13) Les ventes des aéronefs étrangers faites en contravention du paragraphe (1) peuvent être annulées sur demande présentée à une cour supérieure dans les six mois de la date de la vente par toute personne lésée par la contravention.

SYSTEME D'ENREGISTREMENT

Système d'enregistrement 11. Pour l'application de la présente loi, il est établi par les présentes au ministère des Transports, un système d'enregistrement appelé le registre central des aéronefs.

Registreur 12. (1) Le Ministre nomme un registreur au registre central des aéronefs.

(2) Le registreur supervise le fonctionnement du registre.

(3) Le registreur peut désigner le ou les registraires adjoints nécessaires au fonctionnement du registre.

Mode d'enregistrement 13. L'enregistrement des bordereaux de financement et des modifications de ces bordereaux faisant état d'un droit sur un aéronef ou sur des accessions se fait par le dépôt de ces documents au registre, effectué soit en personne, soit par le biais du courrier. L'enregistrement prend effet à compter de l'heure indiquée par le registreur, sur le bordereau de financement ou sur le modificatif.

Pouvoir du registreur de refuser d'enregistrer 14. (1) Le registreur ou le registreur adjoint peut refuser d'enregistrer un bordereau de financement et le modificatif d'un bordereau s'il estime que ces documents ne sont pas conformes à la présente loi ou au règlement. Ce refus doit être motivé.

Seul l'original peut être enregistré (2) Seuls peuvent être enregistrés les originaux des bordereaux de financement et de leurs modificatifs dont la loi permet ou exige l'enregistrement.

Présomption visant la signature (3) Pour l'application de la présente loi, les bordereaux de financement et leurs modificatifs sont réputés être signés par une personne donnée lorsqu'ils sont signés par cette personne ou son mandataire.

La copie certifiée fait foi de prime abord (4) Le certificat du registreur fait foi de la date de l'enregistrement du document concerné, sans qu'il soit nécessaire de prouver la signature ni la qualité officielle du registreur.

Photographies de documents écrits (5) Le Ministre peut faire photographier tout document inscrit au registre et cette reproduction photographique, pour l'application de la présente loi et de toute loi autorisant l'inscription de documents au registre, est réputée être le document enregistré.

Destruction des archives (6) Sous réserve des conditions prescrites, le registrateur peut autoriser la destruction des livres, documents, dossiers, cartes et formules jusqu'alors conservés au registre mais dont la conservation ne paraît plus servir aucune fin utile.

Remarque: Cette destruction devrait être conforme à la politique et aux pratiques du gouvernement.

Cession de la sûreté réelle 15. (1) Lorsqu'une sûreté réelle a fait l'objet de l'enregistrement d'un bordereau de financement et que le créancier garanti cède ses droits, en tout ou en partie, un modificatif du bordereau peut être enregistré en la forme prescrite.

Le cessionnaire devient le créancier garanti (2) Lorsqu'une sûreté réelle n'a pas fait l'objet de l'enregistrement d'un bordereau de financement et que le créancier garanti cède ses droits, il peut être enregistré un bordereau de financement constatant que le cessionnaire est désormais le créancier garanti.

Cession ou enregistrement (3) Après divulgation de la cession ou enregistrement du modificatif d'un bordereau de financement sous le régime du présent article, le cessionnaire a qualité de créancier garanti.

Transfert des droits 16. Lorsqu'une sûreté réelle a fait l'objet de l'enregistrement d'un bordereau de financement et que le débiteur transfère ses droits, le créancier garanti peut faire enregistrer un bordereau de financement constatant la modification survenue.

Subordination de la sûreté réelle 17. Lorsque le créancier garanti a subordonné ses droits aux droits d'une autre personne, un modificatif peut être enregistré tant que dure la validité de l'enregistrement des droits subordonnés.

Renouvellement de l'enregistrement 18. L'enregistrement d'un bordereau de financement relatif à une sûreté réelle peut être renouvelé par enregistrement d'un modificatif en tout temps avant l'expiration de l'enregistrement.

"tribunal" 19. (1) Au présent article, "tribunal" désigne toute cour supérieure d'une province et la Cour fédérale du Canada.

Radiation de l'enregistrement (2) Lorsqu'une sûreté réelle a fait l'objet de l'enregistrement d'un bordereau de financement et qu'il y a mainlevée totale ou partielle de la sûreté, le créancier garanti doit procéder à la radiation de l'enregistrement, en tout ou en partie selon qu'il y a lieu, en enregistrant un modificatif.

Modificatif exigé (3) Lorsqu'il y a eu enregistrement d'un bordereau de financement conformément à la présente loi, et

a) que toutes les obligations garanties par la sûreté réelle constatée par le bordereau ont été exécutées,

b) qu'il est convenu de donner mainlevée d'une partie de la sûreté réelle faisant l'objet du bordereau sur paiement ou exécution de quelques unes des obligations garanties par la sûreté, une fois payées ou exécutées lesdites obligations,

c) que le bordereau prétend donner au créancier garanti une sûreté réelle sur les biens du débiteur que le créancier garanti n'a pas, ou n'a pas le droit de réclamer,

quiconque a des droits sur l'aéronef ou les accessions faisant l'objet du bordereau de financement ou de son modificatif peut signifier au créancier garanti une sommation écrite réclamant le modificatif visé au paragraphe (2), et le créancier garanti doit, dans les quinze jours suivant la signification de la sommation, signer et remettre ou adresser au registre ledit modificatif.

Requête
adressée
au tribu-
nal

(4) Lorsqu'un créancier garanti ne remet pas le modificatif exigé en vertu du paragraphe (3), un tribunal peut, sur demande du requérant et sur avis aux personnes que le tribunal désigne, rendre une ordonnance enjoignant

a) au registrateur de retirer du registre le bordereau de financement ou le modificatif, et

b) au créancier garanti de verser au requérant une somme équivalente aux dépenses qu'il a engagées et aux dommages qu'il a subis.

Autres
modifica-
tions
apportées
à l'enre-
gistrement

20. Une modification apportée de la manière prescrite à un bordereau de financement ou autre document enregistré en vertu de la présente loi peut être enregistrée tant que dure la validité de l'enregistrement du document modifié, et le changement apporté est valablement enregistré à compter de la date d'enregistrement de la modification.

Durée de
validité
de l'enre-
gistrement

21. (1) Sous réserve du règlement, l'enregistrement visé par la présente loi

a) d'un bordereau de financement est valide pendant le délai indiqué dans le bordereau; 1/

b) d'un modificatif renouvelant l'enregistrement d'un bordereau est valide pendant le délai indiqué dans le modificatif; 2/

c) de tout autre modificatif est valide aussi longtemps qu'est valide le bordereau de financement ou le modificatif auquel se rapporte le modificatif mentionné en premier lieu.

1/ et 2/ Ces deux alinéas sont tirés du UPPSA de 1982 et visent, de concert avec le pouvoir de réglementation

approprié, (voir art. 31(i) de cet avant-projet) à autoriser la création d'un système permettant au créancier garanti de choisir la durée de l'enregistrement, ou en d'autres termes, un système prévoyant un enregistrement d'une durée variable. Ce système peut s'inspirer de celui que la Saskatchewan a adopté et qui prévoit des périodes d'enregistrement variables calculées en tranches d'un an et dont la durée maximale peut être de vingt-cinq ans ou même s'étendre à l'infini, mais dans ce cas les autres provinces devraient avoir une loi habilitante. On a proposé d'autres modèles selon lesquels les règlements prévoieraient la durée de validité des enregistrements dans toutes les provinces et dans les Territoires.

Retrait
des archives
du registre

(2) Les bordereaux de financement et leurs modificatifs et les renseignements qu'ils fournissent, selon qu'il y a lieu, peuvent être retirés du registre

a) lorsque le document en question n'est plus valable;

b) sur réception d'un modificatif annulant le Bordereau de financement en tout ou en partie;

c) sur réception d'une ordonnance judiciaire, rendue conformément aux paragraphes 19(4) et 26(5) et ordonnant l'annulation totale ou partielle du bordereau de financement ou de son modificatif.

Non abro-
gation de
certaines
disposi-
tions et
de certains
droits

22. Les dispositions de la présente loi qui traitent de l'enregistrement des bordereaux de financement ne sont pas réputées abroger ou remplacer les dispositions de fond du droit provincial qui traitent de la création des sûretés réelles, des droits des parties à une convention de sûreté ou des droits d'autres personnes.

Demande
d'examen

23. (1) Sur paiement des droits prescrits et de la façon prescrite, toute personne peut, en se rendant personnellement au registre, ou en agissant par courrier, par téléphone ou par message télégraphié,

a) demander l'examen du registre à partir du nom d'un débiteur, d'une entreprise débitrice ou des marques d'immatriculation que le ministère des Transports a attribuées à l'aéronef, et obtenir le résultat de l'examen;

b) demander la transmission des résultats imprimés de l'examen mentionné à l'alinéa a);

c) obtenir une copie certifiée de tout bordereau de financement et de tout modificatif enregistrés.

Le registra-
teur peut
donner les
résultats
de l'examen
par écrit

(2) Le registrateur peut, s'il estime que les résultats de l'examen mentionné au paragraphe précédent sont trop longs pour être transmis oralement comme on lui en a fait la demande, les transmettre sous forme d'imprimé et par courrier, après avoir avisé quiconque a demandé l'examen.

Autre façon
de demander
un examen

(3) Sur autorisation du Ministre, les examens du registre peuvent être demandés et il peut y être procédé d'une façon différente de celle que prévoit le paragraphe (1).

Contenu des
résultats
d'examen

(4) Les résultats des examens prévus au présent article peuvent contenir des renseignements conservés aux fins d'examen du registre, et ils peuvent inclure des renseignements correspondant à des critères relatifs aux examens semblables à ceux que fournit celui qui demande l'examen.

Les résul-
tats imprimés sont
un commen-
cement de
preuve

(5) Les résultats imprimés transmis en vertu du paragraphe (1) et (2), et certifiés par le registrateur font foi de leur contenu sans qu'il y ait à prouver la signature ni le caractère officiel du registrateur.

La copie
certifiée
font foi de
son conte-
nu

(6) Les copies des bordereaux de financement et de leurs modificatifs certifiées par le registrateur font foi de leur contenu à toutes fins que de droit, sans qu'il y ait à prouver la signature ni le caractère officiel du registrateur.

Absence de
présomption
de connais-
sance

24. L'enregistrement n'a pas pour effet de permettre de présumer que les tiers ont reçu avis de l'existence des documents enregistrés ou qu'ils ont connaissance de leur contenu.

Date à
laquelle un
bordereau
de finan-
cement peut
être enre-
gistré

25. Sauf disposition contraire de la présente loi, les bordereaux de financement et leurs modificatifs peuvent être enregistrés à tout moment, y compris à une date antérieure à celle de la signature d'une convention de sûreté ou à celle de la création d'une sûreté réelle.

RENSEIGNEMENTS EXIGES DU CREANCIER GARANTI

"tribunal"

26. (1) Au présent article, "tribunal" désigne une cour supérieure d'une province ou la Cour fédérale du Canada.

Demande de
renseigne-
ments

(2) Le débiteur, le créancier, le shérif et toute personne ayant un droit de propriété sur un aéronef ou sur ses accessions peut, par sommation écrite contenant une adresse de retour et adressée ou remise au créancier garanti à l'adresse figurant au bordereau de financement, ou à une

adresse plus récente s'il en est une qui est connue, sommer le créancier garanti de lui envoyer ou lui remettre à l'adresse de retour, ou si c'est le débiteur qui fait la sommation, d'envoyer ou de remettre à une personne à l'adresse donnée par le débiteur, les documents ou renseignements suivants:

a) la mention écrite du montant de la dette et les conditions de remboursement à la date précisée dans la sommation;

b) l'approbation ou la rectification écrite, à la date précisée dans la sommation, de la liste de l'aéronef et des accessions jointe à la sommation;

c) l'approbation ou la rectification écrite, à la date précisée dans la sommation, du montant de la dette et des conditions de remboursement;

d) une copie conforme de la convention de sûreté et de ses modifications;

e) des renseignements suffisants sur l'endroit où se trouvent l'entente créant une sûreté réelle et toute copie de celle-ci pour permettre à toute personne ayant droit de recevoir une copie conforme de l'entente, ou à son représentant autorisé, de l'examiner s'il le souhaite.

Examen de
l'entente
créant une
sûreté
réelle

(3) Le créancier garanti, sur demande de toute personne ayant droit de recevoir une copie conforme de l'entente créant une sûreté réelle, doit permettre à cette personne ou à son représentant autorisé, d'examiner l'entente ou sa copie conforme pendant les heures ouvrables normales, au lieu précisé dans les renseignements fournis en vertu du paragraphe (2).

Réponse du
créancier
garanti

(4) Le créancier garanti doit répondre à la sommation signifiée en vertu du paragraphe (2) dans les trente jours de sa signification; s'il ne le fait pas, sans motif valable, ou si sa réponse est incomplète ou incorrecte, la personne ayant signifié la sommation a le droit, en sus de tout autre recours prévu par la présente loi et sur avis au créancier garanti, de demander au tribunal une ordonnance enjoignant audit créancier de s'exécuter.

Absence
de réponse

(5) Si le créancier garanti n'obéit pas à l'ordonnance visée au paragraphe (4) le tribunal peut, sur demande de la partie ayant obtenu l'ordonnance et sur avis au créancier garanti,

a) ordonner la radiation de toute inscription au registre ayant trait à la sûreté réelle que possède le créancier garanti;

b) rendre toute ordonnance qu'il estime nécessaire à l'exécution de l'ordonnance.

vulgarisation
nom du
successeur

(6) Lorsque le destinataire de la sommation visée au paragraphe (2) n'est plus intéressé à l'exécution de l'obligation en cause ou n'a plus de droits sur l'aéronef ou sur les accessions concernés il doit, dans les trente jours de la réception de la sommation, révéler les nom et adresse de celui qui lui succède dans ses droits si ces renseignements sont connus de lui; s'il ne le fait pas, sans motif valable, ou si sa réponse est incomplète ou incorrecte, les paragraphes (4) et (5) s'appliquent compte tenu des adaptations de circonstance.

Demande au
tribunal

(7) Sur demande du créancier garanti ou suite à la demande visée au paragraphe (4), le tribunal peut rendre toute ordonnance juste et raisonnable, y compris

a) une ordonnance libérant le créancier garanti en tout ou en partie de l'obligation d'obéir à la sommation ou prorogeant le délai d'exécution;

b) une adjudication de dépens.

Frais affé-
rents aux
réponses

(8) Le créancier garanti peut exiger le paiement anticipé des droits prescrits pour les réponses à la sommation visée au paragraphe (2), mais le débiteur a droit à une réponse gratuite tous les six mois.

Documents
'ayant
s à être
fournis

(9) Le créancier garanti n'est pas tenu de fournir une copie des bordereaux de financement et de leurs modificatifs inscrits.

Action con-
tre le
registrateur

27. (1) Sous réserve du présent article, toute personne lésée pour s'être fiée aux résultats imprimés d'un examen du registre qui ont été certifiés par le registrateur mais qui sont incorrects à raison d'une erreur dans le fonctionnement du registre, peut intenter une action en dommages-intérêts contre le registrateur auprès de la Cour fédérale, mais les dommages-intérêts accordés à chacun des demandeurs individuellement ne peuvent dépasser le montant prescrit.

Prescription

(2) Les actions en dommages-intérêts intentées en vertu du présent article se prescrivent par un an à compter de la découverte du tort causé.

Actions
collectives

(3) Les actions en dommages-intérêts intentées en vertu du présent article doivent l'être à titre d'actions collectives, au nom de tous ceux qui se sont fiés aux mêmes résultats imprimés, et la décision rendue en l'espèce, sauf dans la mesure où elle porte sur des conclusions de fait relatives à la foi accordée par chacun auxdits résultats et où elle prévoit la détermination postérieure du montant des dommages subis par chaque personne lésée, constitue une décision visant d'une part les personnes lésées et d'autre part le registrateur, relativement à une erreur ou omission survenue dans le fonctionnement du registre.

- Idem (4) Les actions en dommages-intérêts intentées en vertu du présent article par des fiduciaires en vertu d'un acte de fiducie ou d'un document semblable ou par toute personne ayant des droits sur un acte de fiducie ou sur un document semblable sont intentées au nom de quiconque a des droits sur le même acte de fiducie ou document semblable, et la décision rendue en l'espèce, sauf dans la mesure où elle prévoit la détermination postérieure des dommages subis par chaque personne lésée, constitue une décision visant d'une part les personnes lésées et d'autre part, le registrateur, relativement à l'erreur ou omission en cause.
- Preuve de la foi accordée aux résultats (5) Dans les actions collectives visées au paragraphe (4), la preuve que chaque personne lésée s'est fiée aux résultats imprimés de l'examen n'est pas nécessaire s'il est établi que le fiduciaire s'y est fié, et nul n'a droit à des dommages-intérêts en vertu du présent article s'il sait, en acquérant ses droits sur l'acte de fiducie ou sur le document semblable, que les résultats sur lesquels se fie le fiduciaire sont erronés.
- Montant global des dommages-intérêts (6) Le montant global des dommages-intérêts versés en vertu des paragraphes (3) et (4) à l'issue d'une seule et unique action ne doit pas dépasser le montant prescrit.
- Pouvoirs conférés à la Cour fédérale (7) Dans les procédures visées aux paragraphes (3) et (4), la Cour fédérale peut rendre les ordonnances qu'elle estime indiquées pour donner avis aux parties lésées.
- Paiement des dommages-intérêts. (8) Sous réserve du paragraphe (6), la Cour fédérale peut ordonner en tout temps après jugement le paiement total ou partiel des dommages-intérêts adjugés aux parties lésées qu'elle mentionne nommément, et le registrateur satisfait au jugement dans la mesure où il paie les dommages-intérêts adjugés.
- Paiement du montant réclamé (9) Sur réception d'un rapport du registrateur énonçant les faits en cause et d'un certificat de celui-ci confirmant le caractère juste et raisonnable de l'indemnité réclamée, le Ministre peut, sans qu'une action ait été intentée, verser le montant réclamé au registrateur à titre d'indemnité.
- Paiement des dommages-intérêts adjugés (10) Lorsqu'il y a eu adjudication de dommages-intérêts et que le délai d'appel est expiré ou que l'appelant n'a pas eu gain de cause, le gouverneur en conseil doit autoriser le paiement desdits dommages-intérêts sur le fonds du revenu consolidé, de la façon et selon le montant spécifiés dans le jugement.
- Immunité de la Couronne (11) Par dérogation à la Loi sur la responsabilité de la Couronne, aucune action ne peut être intentée contre la Couronne du chef du Canada, le registrateur ou tous autres fonctionnaires ou employés préposés au registre pour toute action ou omission de leur part dans l'exercice,

effectif ou prétendu, des devoirs et fonctions visés par la présente loi ou toute autre loi ou par les règlements, si ce n'est conformément aux dispositions du présent article.

DISPOSITION GENERALE

Enregis-
trement
présumé
aux fins
des autres
lois

28. Tout document inscrit au registre en conformité de la présente loi est réputé être enregistré aux fins de toute autre loi fédérale. (Remarque: Aux fins du par. 178(4) de la Loi sur les banques, par exemple. Voir autre remarque à la page A-20 ci-dessous.)

APPLICATION TRANSITOIRE DE LA LOI

Défini-
tions

29. (1) Les définitions suivantes s'appliquent au présent article:

"ancien
droit"
"prior
law"

a) "ancien droit" Le droit fédéral existant avant l'entrée en vigueur de la présente loi.

"sûreté ré-
elle anté-
rieure"

b) "sûreté réelle antérieure" Tout droit créé en vertu de l'ancien droit qui est une sûreté réelle au sens de la présente loi et auquel cette dernière se serait appliquée eût-elle été en vigueur au moment où est né le droit.

"prior secu-
rity interest"

Application
transitoire
de la loi
aux sûretés
réelles
visées par
le droit
fédéral

(2) La présente loi s'applique:

a) aux sûretés réelles créées en vertu du droit fédéral après l'entrée en vigueur de la présente loi;

b) sous réserve du paragraphe (3), aux sûretés réelles antérieures qui ne se sont pas éteintes valablement conformément à l'ancien droit au moment de l'entrée en vigueur de la présente loi;

c) aux sûretés réelles découlant du droit fédéral en raison

(i) d'un renouvellement, d'une prorogation, d'une convention portant nouveau financement ou consolidation dont l'existence est postérieure à l'entrée en vigueur de la présente loi,

(ii) d'une opération à terme renouvelable conclue avant et se continuant après l'entrée en vigueur de la présente loi.

Rang
prioritaire

(3) Le rang prioritaire

a) des sûretés réelles entre elles est déterminé par l'ancien droit, si tous les droits concurrents sont nés sous le régime de l'ancien droit;

b) entre les sûretés réelles et les droits des tiers autres que les sûretés réelles est déterminé par l'ancien droit, si les droits des tiers sont nés avant l'entrée en vigueur de la présente loi et les sûretés réelles sont nées sous le régime de l'ancien droit.

Enregis-
trement
présumé

(4) Les sûretés réelles antérieures qui, à l'entrée en vigueur du présent article, font l'objet d'un dépôt ou d'un enregistrement encore valable en vertu de l'ancien droit, sont réputées avoir été enregistrées sous le régime de la présente loi et sous réserve de la présente loi, la validité du dépôt ou de l'enregistrement se continue pendant deux ans à compter de l'entrée en vigueur de la présente loi; le dépôt ou l'enregistrement, selon le cas, peut se continuer pendant plus longtemps encore par l'enregistrement conformément à la présente loi.

Idem

(5) La sûreté réelle antérieure qui, au moment de sa création, bénéficiait en vertu de l'ancien droit de la même qualité que la sûreté réelle valablement créée et enregistrée en vertu de la présente loi sans avoir à être enregistrée ni déposée est réputée être enregistrée au sens de la présente loi à compter de la date de sa création; cet enregistrement se continue pendant deux ans à compter de l'entrée en vigueur de la présente loi, après quoi la sûreté est réputée ne plus être enregistrée à moins qu'elle ne le soit réellement sous le régime de la présente loi.

Définition
de "sûreté
réelle anté-
rieure"

30. (1) Au présent article, "sûreté réelle antérieure" désigne un droit créé conformément au droit provincial, qui est une sûreté réelle au sens de la présente loi, et auquel cette dernière se serait appliquée eût-elle été en vigueur au moment où est né le droit.

Application
transitoire
de la loi
aux sûretés
réelles
visées par
le droit
provincial

(2) La présente loi s'applique aux sûretés réelles créées conformément au droit provincial après l'entrée en vigueur de la présente loi si le droit provincial en décide ainsi.

Enregis-
trement
présumé

(3) Les sûretés réelles antérieures qui, à l'entrée en vigueur de la présente loi, font l'objet d'un dépôt ou d'un enregistrement encore valable en vertu du droit provincial, sont réputées avoir été enregistrées sous le régime de la présente loi et, sous réserve de la présente loi, la validité du dépôt ou de l'enregistrement se continue pendant deux ans à compter de l'entrée en vigueur de la présente loi; le dépôt ou l'enregistrement, selon le cas, peut se continuer pendant plus longtemps encore par l'enregistrement d'un bordereau de financement renouvelant l'enregistrement conformément à la présente loi.

dem

(4) Les sûretés réelles antérieures qui, avant l'entrée en vigueur de la présente loi, bénéficiaient en vertu de l'ancien droit de la même qualité que les sûretés réelles validement créées et enregistrées en vertu de la présente loi sans avoir à être enregistrées ni déposées sont réputées être enregistrées au sens de la présente loi à compter de la date de leur création; cet enregistrement se continue pendant deux ans à compter de l'entrée en vigueur de la présente loi, après quoi les sûretés sont réputées ne plus être enregistrées à moins qu'elle ne le soient réellement sous le régime de la présente loi.

REGLEMENTS

règlements

31. Le gouverneur en conseil peut, par règlement,

- a) approuver le sceau du registrateur,
- b) prescrire les obligations du registrateur et des registrateurs adjoints,
- c) établir les heures ouvrables du bureau d'enregistrement,
- d) prévoir le bon fonctionnement du système d'enregistrement,
- e) exiger le versement de droits et en établir le mode de paiement et le montant,
- f) établir les règles de pratique et de procédure applicables aux procédures entamées en vertu de la présente loi,
- g) prescrire des formules et prévoir leur utilisation,
- h) prescrire les renseignements à fournir pour identifier un aéronef,
- i) régir la faculté qu'a le créancier garanti d'indiquer le délai de validité d'un bordereau de financement et du modificatif qui le renouvelle,
- j) prescrire les abbréviations, additions et symboles que peuvent comporter les bordereaux de financement, leurs modificatifs et toutes autres formules que la présente loi exige ou autorise, ou que l'on peut utiliser dans la consignation ou la production de renseignements à partir du registre,
- k) exiger ou permettre l'utilisation d'un document pour confirmer l'enregistrement de tout bordereau de financement

ou modificatif, et permettre la rectification d'une erreur d'enregistrement de la part du registrateur ou du système d'enregistrement et prescrire des limites à ces rectifications,

l) prescrire le montant des indemnités payables en vertu de l'article 27,

m) prescrire le montant des droits auxquels a droit le créancier garanti en vertu de l'article 26,

n) prescrire les conditions de conservation au registre ou de destruction des livres, documents, dossiers ou formules,

o) prescrire tout ce qui doit l'être aux termes de la présente loi.

COURONNE

La loi lie
la Couronne

32. La présente loi lie la Couronne du chef du Canada.

ENTREE EN VIGUEUR

Entrée en
vigueur

33. La présente loi ainsi que ses parties et articles entrent en vigueur le ou les jours fixés par proclamation du gouverneur général en conseil.

Modification corrélatrice apportée à la Loi sur l'aéronautique

ANNULATION DE L'IMMATRICULATION D'UN AERONEF

L'immatriculation aux fins d'exportation à partir du Canada d'un aéronef à l'égard duquel un bordereau de financement est inscrit au registre établi en application de la Loi sur le registre central des aéronefs ne peut être annulée sans l'autorisation de chacune des personnes au nom desquelles est enregistré le bordereau.

Remarque sur l'article 28 (Enregistrement présumé aux fins des autres lois)

Suivant les règles que prévoient la loi fédérale, et plus particulièrement ses articles 7 et 8, en matière de rang prioritaire, les sûretés réelles ont un rang supérieur aux droits d'autres créanciers garantis, des cessionnaires, des créanciers qui procèdent à l'exécution et du syndic de faillite. Il se pourrait toutefois que d'autres droits dont traite l'article 178 de la Loi sur les banques entrent en jeu. Les règles que prévoit l'article 178 en ce qui concerne le rang prioritaire sont beaucoup plus vastes que celles que prévoit la loi fédérale. Aussi l'article 179 de la Loi sur les banques, lequel traite du droit de préférence de celles-ci, est-il rédigé en des termes beaucoup plus généraux. Le paragraphe 179(1) prévoit que lorsque la banque a enregistré son préavis, ses droits "priment tous les droits subséquentement acquis sur ces biens..." De plus, en vertu

du paragraphe 178(2) une banque a "les mêmes droits que si la banque avait acquis un récépissé d'entrepôt ou un connaissance visant ces biens". Le paragraphe 186(2) prévoit qu'un récépissé d'entrepôt ou connaissance confère à la banque qui l'a acquis "les droit et titre... sur le récépissé d'entrepôt ou le connaissance et sur des effets, denrées ou marchandises qu'il vise". Force est donc de constater que le droit de préférence que la nouvelle loi accorde à la banque est assez précis alors que celui que prévoit la Loi sur les banques est énoncé en des termes très généraux. Il s'ensuit que pour qu'un droit sur aéronef qui découle de la Loi sur les banques puisse être opposable à une personne qui n'est pas expressément nommée à l'article 7 ou 8 de la loi fédérale, il devra avoir été enregistré en conformité du paragraphe 178(4). Il serait donc peut-être nécessaire d'enregistrer ce droit en vertu des deux lois si l'on veut qu'il soit entièrement garanti. La disposition de l'article 28 de la loi fédérale qui traite de l'enregistrement présumé a pour objet de remédier à cette situation.

5/05/83

ANNEXE BPROJET DE LOI PROVINCIALE

Loi concernant l'enregistrement, la reconnaissance et la réalisation des sûretés réelles sur aéronef.

TITRE ABREGE

Titre
abrégé

1. Loi sur les sûretés réelles sur aéronef.

DEFINITIONS

Définitions 2. Les définitions suivantes s'appliquent à la présente loi.

"accessions" a) "accessions" Biens installés sur un aéronef ou qui y
"accessions" sont fixés.*

"aéronef" b) "aéronef" Toute machine utilisée ou conçue pour la
"aircraft" navigation aérienne, mais ne comprend pas une machine
conçue pour se maintenir dans l'atmosphère grâce à la
réaction, sur la surface de la terre, de l'air expulsé
par la machine. Sauf disposition contraire de la présente loi,
sont visés par la présente définition les aéronefs immatriculés
au Canada.

"aéronef
étranger"
"foreign
aircraft"
c) "aéronef étranger" Aéronef immatriculé dans un Etat
contractant autre que le Canada.

"bail d'une
durée de
plus d'un
an"
d) "bail d'une durée de plus d'un an" S'entend en outre
d'un bail

"lease for
a term of
more than
one year"
i) d'une durée d'un an ou moins qui est renouvelable
automatiquement ou qui est renouvelable au choix de l'une
des parties ou sur consentement pour une ou plusieurs
périodes dont le total peut dépasser un an;

ii) consenti initialement pour une durée indéterminée
ou pour moins d'un an, lorsque le preneur, du consentement
du bailleur, conserve la possession ininterrompue ou sensi-
blement ininterrompue des biens loués pendant une période
supérieure à un an après la date où il a initialement acquis
possession des biens, et que le bail se transforme en un
bail d'une durée de plus d'un an dès que le preneur reste
en possession des biens loués pendant plus d'un an.

Le bail d'une durée de plus d'un an ne s'entend toutefois
pas du bail consenti par un bailleur dont l'entreprise ne
consiste pas à louer des biens.

* Le mot "accessions" pourrait poser des problèmes dans le
contexte du droit civil.

- "bordereau de financement"
"financing statement"
- e) "bordereau de financement" Document rédigé en la forme prescrite par la Loi sur le registre central des aéronefs (loi fédérale) et dont l'enregistrement est requis ou permis par la présente loi; s'entend en outre du modificatif d'un bordereau de financement, sauf si le contexte s'y oppose.
- "convention de sûreté"
"security agreement"
- f) "convention de sûreté" Convention créant ou prévoyant une sûreté réelle; s'entend en outre d'un écrit constatant l'existence d'une convention de sûreté si le contexte le permet.
- "cour"
"court"
- g) "cour" Sauf disposition contraire de la présente loi, une cour supérieure établie par la province.
- "créancier garanti"
"secured party"
- h) "créancier garanti" Désigne
- (i) le titulaire d'une sûreté réelle, et
- (ii) le fiduciaire, dans le cas où une convention de sûreté est comprise ou constatée dans un contrat de fiducie ou dans un document semblable.
- "débiteur"
"debtor"
- i) "débiteur" Désigne
- (i) la personne tenue à l'exécution de l'obligation garantie, qu'elle possède ou non l'aéronef ou les accessions en cause ou qu'elle ait ou non des droits sur ceux-ci, et comprend en outre, si le contexte l'exige,
- a) un preneur à bail;
- b) le cessionnaire des droits du débiteur sur un aéronef ou sur des accessions, et celui qui succède au débiteur dans ces droits; ou
- (ii) lorsque le débiteur n'en est pas le propriétaire, le propriétaire de l'aéronef et des accessions et ce, dans toute disposition qui traite de l'aéronef ou des accessions.
- "enregistré"
"registered"
- j) "enregistré" Enregistré conformément à la Loi sur le registre central des aéronefs (Canada), sauf si le contexte s'y oppose.
- "Etat contractant"
"Contracting State"
- k) "Etat contractant" Etat partie à la Convention relative à la reconnaissance internationale des droits sur aéronef signée à Genève le dix-neuvième jour du mois de juin de l'an mil neuf cent quarante-huit.

registre
central
des
aéronefs"
"central
aircraft
registry"

1) "registre central des aéronefs" Registre établi par la
Loi sur le registre central des aéronefs (Canada).

"registre
étranger"
"foreign
registry"

m) "registre étranger". Le registre public d'un Etat
contractant autre que le Canada dans lequel les droits sur
aéronef sont inscrits.

"sûreté
réelle"
"security
interest"

n) "sûreté réelle" Droit sur un aéronef canadien ou sur
des accessions qui garantit le paiement ou l'exécution
d'une obligation; ce droit s'entend en outre du droit du
bailleur qui a consenti un bail d'une durée de plus d'un
an, même si ce bail ne garantit pas le paiement ni
l'exécution d'une obligation.

"valeur"
"value"

o) "valeur" Ouverture de crédit, prêt d'argent ou obligation
irrévocable à cet effet; s'entend en outre d'une dette ou
d'une obligation antérieures.

APPLICATION

Application
de la loi
aux enten-
tes créant
des sûre-
tés réel-
les

3. Sous réserve de l'article 5, la présente loi vise
toute convention, sans égard à sa forme ni au propriétaire
de l'aéronef ou des accessions, qui de fait crée une sûreté
réelle sur des accessions ou un aéronef en appli-
cation du droit de cette province.

Non appli-
cation à
certains
aéronefs

4. La présente loi ne s'applique pas aux aéronefs des
services douaniers ni aux aéronefs militaires qui appar-
tiennent à Sa Majesté du chef du Canada, ni aux aéronefs
des services de la police qui appartiennent à Sa Majesté
du chef du Canada ou d'une province.

CONFLIT DE LOIS

Validité
de la
sûreté
réelle

5. (1) La validité d'une sûreté réelle est régie par
le droit de la juridiction où est fixé le débiteur au moment
où la sûreté est créée.

Siège
social du
débiteur

(2) Pour l'application du paragraphe (1), le débiteur
est réputé être fixé à son lieu d'affaires s'il en a un,
à son bureau principal s'il a plusieurs lieux d'affaires et
dans les autres cas, à sa résidence principale.

Questions
de procé-
dure

(3) Par dérogation au paragraphe (1),

- a) les questions de procédure qui influent sur l'exercice du droit d'un créancier garanti sur un aéronef ou des accessions sont régies par le droit de la juridiction où sont situés l'aéronef ou les accessions au moment de l'exercice du droit;
- b) les questions de fond qui influent sur l'exercice du droit du créancier garanti sur un aéronef ou des accessions sont régies par la loi applicable au contrat conclu par le créancier garanti et le débiteur.

CREATION DE LA SURETE REELLE

Création
de la
sûreté
réelle

- 6. Il y a sûreté réelle lorsque
 - a) valeur est donnée;
 - b) le débiteur a des droits sur l'aéronef ou les accessions; et
 - c) dans le cas d'un aéronef, le créancier garanti en a la possession, ou
 - d) dans le cas d'un aéronef ou d'accessions, le débiteur a signé une convention de sûreté comportant une description de l'aéronef ou des accessions suffisamment précise pour en permettre l'identification.

RANG PRIORITAIRE

Mesures
visant à
assurer le
rang prio-
ritaire

7. (1) Le présent article s'applique aux sûretés réelles créées en application du droit de cette province.

(2) Par dérogation à toute autre loi, aucune sûreté réelle ou convention de sûreté, et aucun avis de sûreté réelle, n'ont à être inscrits, déposés ou enregistrés, sauf en conformité de la présente loi, pour être valide et pour avoir le rang prioritaire prévu par celle-ci.

(3) Pour jouir du rang prioritaire prévu par les articles 8, 9 et 10,

- a) la sûreté réelle doit être valablement créée et opposable aux tiers, et
 - b) la sûreté réelle doit faire l'objet de l'enregistrement d'un bordereau de financement,
- indépendamment de l'ordre dans lequel se produisent ces événements.

Rang
inférieur
à la
sûreté
réelle

8. La sûreté réelle a un rang inférieur aux droits
- a) d'une personne qui, dans le but d'exécuter un jugement,
 - (i) fait saisir l'aéronef ou les accessions par voie légale, ou
 - (ii) obtient, d'un tribunal, une ordonnance touchant l'aéronef ou les accessions;
 - b) du mandataire des créanciers mais uniquement aux fins de donner effet aux droits des personnes mentionnées à l'alinéa a) et à ceux du syndic de faillite; et
 - c) du cessionnaire d'un droit sur l'aéronef ou les accessions qui n'est pas un créancier garanti et qui acquiert son droit à titre onéreux et sans connaître l'existence de la sûreté réelle;
- si la sûreté réelle n'est pas inscrite au registre central des aéronefs au moment où prend naissance le droit des personnes mentionnées aux alinéas a) à c).

RANG PRIORITAIRE DES SURETES REELLES ENREGISTREES

Rang
priori-
taire
des sûre-
tés réel-
les enre-
gistrées

9. (1) Lorsqu'aucune autre disposition de la présente loi ne s'applique
- a) le rang prioritaire des sûretés réelles inscrites relativement au même aéronef se détermine en fonction de la date de leur inscription;
 - b) la sûreté réelle inscrite relativement à un aéronef a un rang supérieur à la sûreté réelle sur ce même aéronef qui n'est pas inscrite;
 - c) le rang prioritaire des sûretés réelles sur un même aéronef qui ne sont pas inscrites se détermine en fonction de la date de leur création.
- (2) Le rang prioritaire accordé à une sûreté réelle à la suite de son inscription au registre central des aéronefs n'est pas modifié par la cession de la sûreté.
- (3) Le rang prioritaire accordé à une sûreté réelle sur aéronef en application du présent article s'applique

Rang
priori-
taire de
la sûreté
réelle qui
a fait
l'objet
d'une
cession

Applica-
tion du
rang
priori-
taire

a) à toutes les avances consenties en vertu d'une convention de sûreté prévoyant une sûreté réelle, indépendamment du fait que le créancier garanti soit ou non tenu de consentir ces avances, et

b) à toutes les avances consenties ou à toutes les dépenses engagées par le créancier garanti pour protéger, entretenir, conserver et réparer l'aéronef.

Sens de l'expression "sûreté d'achat" (4) Pour l'application du paragraphe (5), l'expression "sûreté d'achat" signifie

a) une sûreté réelle que prend ou se réserve le vendeur d'un aéronef dans le but de garantir le paiement de la totalité ou d'une partie du prix de vente de l'aéronef,

b) une sûreté réelle sur un aéronef que prend une personne qui donne valeur dans le but de permettre au débiteur d'acquérir des droits sur l'aéronef, dans la mesure où cette valeur sert effectivement à l'acquisition de ces droits,

c) le droit d'un bailleur qui loue un aéronef en vertu d'un bail d'une durée de plus d'un an.

Rang prioritaire de la sûreté d'achat (5) Une sûreté d'achat a un rang supérieur à toute autre sûreté réelle sur aéronef donnée par le même débiteur si la sûreté d'achat est inscrite à la date où le débiteur prend possession de l'aéronef.

Application des règles concernant le rang prioritaire (6) Les règles concernant le rang prioritaire que prévoient les dispositions du présent article et des articles 8 et 10 s'appliquent aux sûretés réelles créées en application du droit provincial ou fédéral.

Rang prioritaire des sûretés réelles grevant les accessions 10. (1) La sûreté réelle qui grève des biens

a) avant que ces biens ne deviennent des accessions a, sous réserve de l'alinéa b), un rang supérieur à un droit sur l'aéronef créé avant la date à laquelle les biens sont devenus des accessions;

b) avant que ces biens ne deviennent des accessions n'a pas un rang supérieur au droit d'une personne qui a une sûreté réelle sur l'aéronef à la date à laquelle les biens deviennent des accessions dans la mesure où cette personne consent ou engage des avances après que les biens soient devenus des accessions et avant que la sûreté réelle sur les accessions ne soit inscrite;

c) après que ces biens soient devenus des accessions a, en ce qui concerne les biens, un rang supérieur au droit sur l'aéronef acquis subséquentement, si la sûreté réelle sur les biens est inscrite avant que ce droit ne soit acquis;

d) après que ces biens soient devenus des accessions n'a pas un rang supérieur à un droit sur l'aéronef créé avant la date à laquelle la sûreté réelle sur les accessions ne doit donnée, à moins que le titulaire du droit sur l'aéronef n'ait consenti à ce que la sûreté réelle soit donnée à l'égard des accessions.

(2) Les règles concernant le rang prioritaire prévues à l'article 9 s'appliquent mutatis mutandis aux sûretés réelles grevant les mêmes accessions.

VENTE DES AERONEFS ETRANGERS

Formalités

11. (1) Nonobstant toute loi de la province, nul ne peut procéder, dans cette province, à la vente forcée d'un aéronef étranger aux fins d'exercer les droits qui sont les siens en vertu d'un contrat ou d'une décision judiciaire, sans avoir

a) demandé à une cour supérieure une ordonnance autorisant la vente, cette demande étant accompagnée d'un extrait certifié énonçant tous les droits inscrits au registre étranger approprié relativement à l'aéronef en question;

b) obtenu une ordonnance de la cour supérieure susmentionnée

(i) fixant le lieu et la date de la vente, qui ne doit pas avoir lieu moins de six semaines après la date de l'ordonnance, et

(ii) déterminant où et de quelle façon doit être donné l'avis public de la vente; et

c) notifié de la date et du lieu de la vente chaque titulaire des droits sur l'aéronef en question inscrits au registre étranger, cet avis devant être adressé au moins un mois avant la date de la vente, par courrier recommandé, à chaque titulaire à sa dernière adresse portée audit registre.

Reconnaissance des droits

(2) La cour saisie de la demande visée au présent article doit reconnaître

a) le droit de propriété sur aéronef,

b) le droit pour le détenteur d'un aéronef d'en acquérir la propriété par voie d'achat,

c) le droit d'utiliser un aéronef en exécution d'un contrat de location consenti pour une durée de six mois au moins,

d) l'hypothèque, le "mortgage" et tout droit similaire sur un aéronef créé conventionnellement en garantie du paiement d'une dette,

à condition que de tels droits soient:

(i) constitués conformément à la loi de l'Etat contractant où l'aéronef est immatriculé lors de leur constitution et

(ii) régulièrement inscrits sur le registre public de l'Etat contractant où l'aéronef est immatriculé.

Détermination de la régularité des inscriptions

(3) La régularité des inscriptions successives dans différents Etats contractants est déterminée d'après la loi de l'Etat contractant où l'aéronef étranger est immatriculé au moment de chaque inscription.

Priorité des droits sur un aéronef étranger

(4) Le rang prioritaire des droits sur un aéronef étranger est déterminé conformément à la loi de l'Etat contractant où les droits sont inscrits.

Priorité des créances relatives au sauvetage et aux frais extraordinaires

(5) Les créances afférentes

a) aux rémunérations dues pour sauvetage de l'aéronef étranger,

b) aux frais extraordinaires indispensables à la conservation de l'aéronef,

sont préférables à tous autres droits et créances grevant l'aéronef, à la condition d'être privilégiés et assortis d'un droit de suite au regard de la loi de l'Etat contractant où ont pris fin les opérations de sauvetage ou de conservation.

Idem

(6) Les créances énumérées au paragraphe (5) prennent rang dans l'ordre chronologique inverse des événements qui les ont fait naître.

Idem

(7) Lesdits droits ne devront pas être reconnus à l'expiration du délai de trois mois après le sauvetage ou les opérations de conservation à moins qu'au cours dudit délai:

a) la créance privilégiée ne fasse l'objet d'une mention au registre de l'Etat contractant où l'aéronef est immatriculé; et

b) le montant de la créance ne soit fixé amiablement ou qu'une action judiciaire concernant cette créance ne soit introduite; il est entendu que dans ce cas la loi du

tribunal saisi détermine les causes d'interruption ou de suspension du délai.

Priorité
particulière
accordée
aux
frais

(8) Dans les ventes forcées d'un aéronef étranger dans la province conformément au présent article, les frais légalement exigibles selon la loi de la province et qui sont occasionnés dans l'intérêt commun des créanciers au cours de la procédure d'exécution en vue de la vente sont remboursés sur le produit de la vente avant toutes autres créances même celles qui sont privilégiées aux termes du paragraphe (5).

Priorité
accordée
aux sommes
garanties

(9) La priorité qui s'attache aux droits mentionnés au paragraphe (2) alinéa d) s'étend à toutes les sommes garanties. Toutefois, le montant des intérêts inclus ne doit pas être supérieur à la somme des intérêts échus au cours des trois années antérieures à la procédure en vue de la vente prévue au présent article, et des intérêts échus au cours de cette procédure.

Privilèges
et charges

(10) Par dérogation à toute autre loi de la province, aucun privilège et aucune charge grevant un aéronef étranger, sauf ceux qui sont mentionnés au paragraphe (2), et aucun privilège et aucune charge de Sa Majesté du chef de (la province) grevant cet aéronef ne sont préférables aux droits mentionnés aux paragraphes (2) et (5) respectivement et inscrits relativement à l'aéronef dans le registre étranger de l'Etat contractant dans lequel est immatriculé cet aéronef.

Extinction
de tous
les droits
préférables

(11) Aucune vente forcée d'un aéronef étranger ne peut être effectuée dans des circonstances auxquelles le présent article s'applique si les droits préférables à ceux du créancier saisissant ne peuvent être éteints grâce au produit de la vente ou ne sont pris en charge par l'acquéreur.

Ordonnance
du
tribunal

(12) Lorsqu'un tribunal autorise la vente d'un aéronef étranger en application du présent article, l'ordonnance en question doit, sur versement du produit de la vente au tribunal,

a) assigner à une personne nommément désignée par le tribunal le droit de transférer la propriété de l'aéronef étranger purgée de tous les droits inscrits au registre à l'égard de cet aéronef; et

b) fixer conformément au présent article l'ordre dans lequel seront acquittées avec le produit de la vente les créances visant l'aéronef.

Annulation
de la
vente

(13) Les ventes des aéronefs étrangers faites en contravention du paragraphe (1) peuvent être annulées sur demande présentée à une cour supérieure dans les six mois de la date de la vente par toute personne lésée par la contravention.

APPLICATION DE LA LOI SUR LE REGISTRE CENTRAL DES AERONEFS (CANADA)

Application
de la Loi
sur le
registre
central
des aéro-
nefs
(Canada)

12. Les dispositions de la Loi sur le registre central des aéronefs (Canada) qui traitent de l'enregistrement des sûretés réelles et celles qui traitent des exemptions s'appliquent aux sûretés réelles auxquelles s'applique la présente loi et sont réputées faire partie de celle-ci.

ABSENCE DE PRESOMPTION DE CONNAISSANCE

Absence
de présomp-
tion de
connaiss-
sance

13. L'enregistrement n'a pas pour effet de permettre de présumer que les tiers ont reçu avis de l'existence des documents enregistrés ou qu'ils ont connaissance de leur contenu.

RENSEIGNEMENTS EXIGES DU CREANCIER GARANTI

14. (1) Les définitions suivantes s'appliquent au présent article:

"cour"
"court"

"cour" Une cour supérieure établie par la province ou la Cour fédérale du Canada.

"créancier"
"creditor"

"créancier" Un cessionnaire pour le bénéfice des créanciers, un syndic de faillite, un séquestre, un exécuteur, un administrateur, un tuteur ou un curateur.

demande
de rensei-
gnements

(2) Le débiteur, le créancier, le shérif et toute personne ayant un droit de propriété sur un aéronef ou sur ses accessions peut, par sommation écrite contenant une adresse de retour et adressée ou remise au créancier garanti à l'adresse figurant au bordereau de financement, ou à une adresse plus récente s'il en est une qui est connue, sommer le créancier garanti de lui envoyer ou lui remettre à l'adresse de retour, ou si c'est le débiteur qui fait la sommation, d'envoyer ou de remettre à une personne à l'adresse donnée par le débiteur, les documents ou renseignements suivants:

a) la mention écrite du montant de la dette et les conditions de remboursement à la date précisée dans la sommation;

b) l'approbation ou la rectification écrite, à la date précisée dans la sommation, de la liste de l'aéronef et des accessions jointe à la sommation;

c) l'approbation ou la rectification écrite, à la date précisée dans la sommation, du montant de la dette et des conditions de remboursement;

d) une copie conforme de la convention de sûreté et de ses modifications;

e) des renseignements suffisants sur l'endroit où se trouvent l'entente créant une sûreté réelle et toute copie de celle-ci pour permettre à toute personne ayant droit de recevoir une copie conforme de l'entente, ou à son représentant autorisé, de l'examiner s'il le souhaite.

Examen de
l'entente
créant une
sûreté
réelle

(3) Le créancier garanti, sur demande de toute personne ayant droit de recevoir une copie conforme de l'entente créant une sûreté réelle, doit permettre à cette personne ou à son représentant autorisé, d'examiner l'entente ou sa copie conforme pendant les heures ouvrables normales, au lieu précisé dans les renseignements fournis en vertu du paragraphe (2).

Réponse du
créancier
garanti

(4) Le créancier garanti doit répondre à la sommation signifiée en vertu du paragraphe (2) dans les trente jours de sa signification; s'il ne le fait pas, sans motif valable, ou si sa réponse est incomplète ou incorrecte, la personne ayant signifié la sommation a le droit, en sus de tout autre recours prévu par la présente loi et sur avis au créancier garanti, de demander au tribunal une ordonnance enjoignant audit créancier de s'exécuter.

Absence
de réponse

(5) Si le créancier garanti n'obéit pas à l'ordonnance visée au paragraphe (4) le tribunal peut, sur demande de la partie ayant obtenu l'ordonnance et sur avis au créancier garanti,

a) ordonner la radiation de toute inscription au registre ayant trait à la sécurité réelle que possède le créancier garanti;

b) rendre toute ordonnance qu'il estime nécessaire à l'exécution de l'ordonnance.

Divulgation
du nom du
successeur

(6) Lorsque le destinataire de la somme visée au paragraphe (2) n'est plus intéressé à l'exécution de l'obligation en cause ou n'a plus de droits sur l'aéronef ou sur les accessions concernés il doit, dans les trente jours de la réception de la sommation, révéler les nom et adresse de celui qui lui succède dans ses droits si ces renseignements sont connus de lui; s'il ne le fait pas, sans motif valable, ou si sa réponse est incomplète ou incorrecte, les paragraphes (4) et (5) s'appliquent compte tenu des adaptations de circonstance.

Demande au
tribunal

(7) Sur demande du créancier garanti ou suite à la demande visée au paragraphe (4), le tribunal peut rendre toute ordonnance juste et raisonnable, y compris

a) une ordonnance libérant le créancier garanti en tout ou en partie de l'obligation d'obéir à la sommation ou prorogeant le délai d'exécution;

b) une adjudication de dépens.

Frais affé-
rents aux
réponses

(8) Le créancier garanti peut exiger le paiement anticipé des droits prescrits pour les réponses à la sommation visée au paragraphe (2), mais le débiteur a droit à une réponse gratuite tous les six mois.

Documents
n'ayant
pas à
être
fournis

(9) Le créancier garanti n'est pas tenu de fournir une copie des bordereaux de financement et de leurs modifications inscrits.

APPLICATION TRANSITOIRE DE LA LOI

Définitions

15. (1) Les définitions suivantes s'appliquent au présent article:

"ancien
droit"

a) "ancien droit" Le droit de la province existant avant l'entrée en vigueur de la présente loi.

"prior
law"

"sûreté
réelle
anté-
rieure"

b) "sûreté réelle antérieure" Tout droit prenant naissance sous l'ancien droit, qui est une sûreté réelle au sens de la présente loi, et auquel cette dernière se serait appliquée eût-elle été en vigueur au moment où est né le droit.

"prior
security
interest"

Application
transitoire
de la loi

(2) La présente loi s'applique:

a) aux sûretés réelles créées en vertu du droit de la province après l'entrée en vigueur de la présente loi;

b) sous réserve du paragraphe (3), aux sûretés réelles antérieures qui ne se sont pas éteintes valablement conformément à l'ancien droit au moment de l'entrée en vigueur de la présente loi;

c) aux sûretés réelles prenant naissance en raison

(i) d'un renouvellement, d'une prorogation, d'une convention portant nouveau financement ou consolidation dont l'existence est postérieure à l'entrée en vigueur de la présente loi,

(ii) d'une opération à terme renouvelable conclue avant et se continuant après l'entrée en vigueur de la présente loi.

Rang prioritaire

(3) Le rang prioritaire

a) des sûretés réelles entre elles est déterminé par l'ancien droit, si les droits des tiers sont nés sous le régime de l'ancien droit.

b) entre les sûretés réelles et les droits des tiers autres que les sûretés réelles est déterminé par l'ancien droit, si les droits des tiers sont nés avant l'entrée en vigueur de la présente loi et les sûretés réelles sont nées sous le régime de l'ancien droit.

Enregistrement réputé

(4) Les sûretés réelles antérieures qui, à l'entrée en vigueur du présent article, font l'objet d'un dépôt ou d'un enregistrement encore valable en vertu de l'ancien droit, sont réputées avoir été enregistrées sous le régime de la présente loi; le dépôt ou l'enregistrement, selon le cas, peut se continuer pendant plus longtemps encore par l'enregistrement d'un bordereau de financement renouvelant l'enregistrement conformément à la présente loi.

Idem

(5) Les sûretés réelles antérieures créées avant l'entrée en vigueur de la présente loi et dont le droit de la province autorise l'enregistrement ou le dépôt en vertu dudit droit existant avant l'entrée en vigueur de la présente loi, sont réputées enregistrées sous le régime de la présente loi à compter de leur naissance; cet enregistrement se continue pendant deux ans à compter de l'entrée en vigueur de la présente loi, après quoi les sûretés sont réputées ne plus être enregistrées à moins qu'elles ne le soient réellement sous le régime de la présente loi.

COURONNE

La loi lie la Couronne

16. La présente loi lie la Couronne.

ENTREE EN VIGUEUR

Entrée en vigueur

17. La présente loi et ses parties et articles entrent en vigueur le ou les jours fixés par proclamation du lieutenant-gouverneur en conseil.

Le 31 mars 1983

LISTE DES ETATS QUI ONT SIGNE, RATIFIE OU ADHERE A LA CONVENTION
RELATIVE A LA RECONNAISSANCE INTERNATIONALE DES DROITS SUR AERONEF.

SIGNE A GENEVE LE 19 JUIN 1948(1)

<u>Etats</u>	<u>Date de la Signature</u>	<u>Date du dépôt de l'instrument de ratification ou d'adhésion</u>	<u>Date de l'entrée en vigueur</u>
Algérie		10 août 1964	8 novembre 1964
Allemagne, République fédérale d'(2)		7 juillet 1959	5 octobre 1959
Argentine	19 juin 1948	31 janvier 1958	1 mai 1958
Australie	9 juin 1950		
Belgique	19 juin 1948		
Brésil	19 juin 1948	3 juillet 1953	1 octobre 1953
Chili	19 juin 1948	19 décembre 1955	18 mars 1956
Chine	19 juin 1948		
Colombie	19 juin 1948		
Congo, Rép. populaire du		3 mai 1982	1 août 1982
Côte d'Ivoire		23 août 1965	21 novembre 1965
Cuba	20 juin 1949	20 juin 1961	18 septembre 1961
Danemark	3 janvier 1949	18 janvier 1963	18 avril 1963
Egypte, République arabe d'		10 septembre 1969	9 décembre 1969
El Salvador		14 août 1958	12 novembre 1958
Equateur		14 juillet 1958	12 octobre 1958
Etats-Unis d'Amérique(3)	19 juin 1948	6 septembre 1949	17 septembre 1953
Ethiopie		7 juin 1979	5 septembre 1979
France	19 juin 1948	27 février 1964	27 mai 1964
Gabon		14 janvier 1970	14 avril 1970
Grèce	19 juin 1948	23 février 1971	14 mai 1971
Guinée		13 août 1980	11 novembre 1980
Haiti		24 mars 1961	22 juin 1961
Iran	18 mars 1950		
Iraq		12 janvier 1981	12 avril 1981
Irlande	30 novembre 1948		
Islande	19 juin 1948	6 février 1967	7 mai 1967
Italie	19 juin 1948	6 décembre 1960	6 mars 1961
Jamahiriya arabe libyenne		5 mars 1973	4 juin 1973
Koweït(4)		27 novembre 1979	25 février 1980
Liban		11 avril 1969	10 juillet 1969
Luxembourg		16 décembre 1975	15 mars 1976

Genève
19 juin 1948

<u>Etats</u>	<u>Date de la Signature</u>	<u>Date du dépôt de l'instrument de ratification ou d'adhésion</u>	<u>Date de l'entrée en vigueur</u>
Madagascar		9 janvier 1979	9 avril 1979
Mali		28 décembre 1961	28 mars 1962
Mauritanie		23 juillet 1962	21 octobre 1962
Mexique(5)	19 juin 1948	5 avril 1950	17 septembre 1953
Niger		27 décembre 1962	27 mars 1963
Norvège	3 janvier 1949	5 mars 1954	3 juin 1954
Pakistan	21 août 1951	19 juin 1953	17 septembre 1953
Paraguay		26 septembre 1969	25 décembre 1969
Pays-Bas, Royaume des (6)	19 juin 1948	1 septembre 1959	30 novembre 1959
Pérou	19 juin 1948		
Philippines		22 février 1978	23 mai 1978
Portugal	19 juin 1948		
République centrafricaine		2 juin 1969	31 août 1969
République démocratique populaire lao		4 juin 1956	2 septembre 1956
République dominicaine	19 juin 1948		
République-Unie du Cameroun		23 juillet 1969	21 octobre 1969
Royaume-Uni	19 juin 1948		
Rwanda		17 mai 1971	15 août 1971
Seychelles		16 janvier 1979	16 avril 1979
Suède	3 janvier 1949	16 novembre 1955	14 février 1956
Suisse	19 juin 1948	3 octobre 1960	1 janvier 1961
Tchad		14 février 1974	15 mai 1974
Thaïlande		10 octobre 1967	9 janvier 1968
Togo		2 juillet 1980	30 septembre 1980
Tunisie		4 mai 1966	2 août 1966
Venezuela	19 juin 1948		

- 3 -

Genève
19 juin 1948

- (1) Conformément aux dispositions de son article XX l'Acord est entré en vigueur le 17 septembre 1953 entre les Etats-unis d'Amérique et le Pakistan.
- (2) La Convention s'applique également au Land de Berlin.
- (3) Déclaration du Gouvernement des Etats-Unis d'Amérique en date du 1er juillet 1950:
"Le Gouvernement des Etats-Unis d'Amérique considère que la réserve dont le Mexique a assorti sa ratification a le caractère d'un amendement qui dégrade, dans une très large mesure, la protection que confère la Convention aux personnes qui ont des droits de propriété sur aéronef. Par conséquent, le Gouvernement des Etats-Unis d'Amérique n'est pas en mesure d'accepter la réserve émise par le Gouvernement du Mexique et ne considère pas que la Convention relative à la reconnaissance internationale des droits sur aéronef, telle qu'elle a été ratifiée par le Mexique, est entrée en vigueur entre les Etats-Unis d'Amérique et le Mexique à la date du 4 juillet 1950".
- (4) Il est entendu que l'adhésion à la Convention relative à la reconnaissance internationale des droits sur aéronefs (Genève, 1948) ne signifie en aucune manière la reconnaissance d'Israël par l'Etat du Koweït. De plus, aucune relation de traité entre l'Etat du Koweït et Israël n'en découlera.
- (5) Traduction du Secrétariat de l'OACI: "Le Gouvernement mexicain se réserve expressément le droit de reconnaître les priorités accordées par la loi mexicaine aux créances fiscales et aux créances résultant de contrats de travail sur toutes autres créances. Les priorités mentionnées dans la Convention relative à la reconnaissance internationale des droits sur aéronef, signée à Genève, seront donc soumises, dans le territoire national, aux priorités accordées en vertu de la loi mexicaine aux créances fiscales et aux créances résultant de contrats de travail".
- (6) La convention ne s'applique qu'au Royaume des Pays-Bas en Europe.

APPENDIX D - ANNEXE D

MEMBERS OF FEDERAL/PROVINCIAL WORKING GROUP ON NATIONAL
REGISTRY FOR SECURITY INTERESTS IN AIRCRAFT -
MEMBRES DU GROUPE DE TRAVAIL FEDERAL/PROVINCIAL SUR LE
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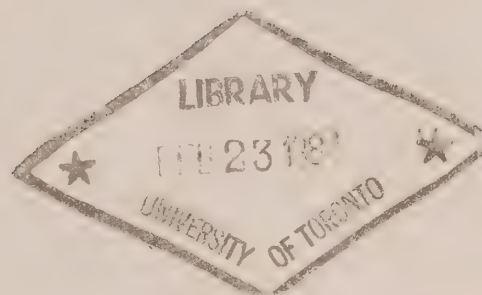
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FEDERAL-PROVINCIAL CONFERENCES OF
ATTORNEYS GENERAL, MINISTERS RESPONSIBLE FOR
CRIMINAL JUSTICE AND MINISTERS
RESPONSIBLE FOR CORRECTIONS

Comments of the Quebec Human Rights
Commission regarding Bill C-157, the Canadian
Security Intelligence Service Act

Quebec



OTTAWA (Ontario)
July 11 - 12, 1983

Quebec Human Rights Commission

COMMENTS OF THE QUEBEC HUMAN RIGHTS
COMMISSION REGARDING BILL C-157, THE
CANADIAN SECURITY INTELLIGENCE SERVICE ACT

July 7, 1983

360, rue Saint-Jacques
Montreal, Quebec H2Y 1P5
(514) 873-5146

The Quebec Human Rights Commission has studied Bill C-157, the Canadian Security Intelligence Service Act, tabled in the House of Commons by the Solicitor General of Canada.

Although this is a federal bill, the Commission feels bound to comment on it, since its provisions could significantly affect the rights of Quebecers.

The Commission is an administrative organization authorized by its enabling legislation - the Quebec Charter of Human Rights and Freedoms - to promote fundamental rights, using any appropriate measures. Thus, the Commission would like to point out which of these rights risk being adversely affected by Bill C-157.

Since this is a federal bill, the Quebec Charter cannot be invoked; instead, we will refer to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, ratified by Canada in 1976. The principles of these two instruments are reflected in Section 8 of the Canadian Charter of Rights and Freedoms:

Everyone has the right to be secure against unreasonable search or seizure.

Article 12 of the Universal Declaration of Human Rights states that:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Virtually the same wording is used in Article 17 of the International Covenant on Civil and Political Rights:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

In addition to these provisions concerning privacy, both the Universal Declaration and the Covenant establish the right to freedom of opinion and expression, as well as the right not to be subject to coercion which would impair these freedoms, with the exception of certain limitations prescribed by law and necessary, notably, for the protection of national security (Universal Declaration, Arts 19 and 20; Covenant, Arts 18 and 19).

Finally, Article 17 of the Declaration recognizes the right to own property and the right not to be arbitrarily deprived of that property.

In the explanatory notes accompanying Bill C-157, the Solicitor General indicates that the bill is designed to strike the delicate balance between freedom and security in a democratic society. He also provides explanations concerning the creation of the new Security Intelligence Service, which must meet the requirements of national security and, at the same time, respect civil freedoms and the right to privacy.

In our opinion, this bill will facilitate access to personal information without providing criteria which would **make it** possible to prevent both arbitrary administrative decisions and the granting of unreasonable judicial warrants in relation to the objectives pursued. Moreover, although the creation of a Review Committee responsible for receiving complaints, conducting investigations and making recommendations represents an improvement over the current situation, this Committee will not be able to intervene until after the unreasonable interference has taken place.

After reviewing the duties and functions of the Service, we will give our comments and outline our criticisms regarding some of the bill's provisions: our main concern is the lack of criteria to guide judges in the issuing of warrants to authorize searches, seizures or the interception of communications. In addition, we deplore the virtually boundless administrative discretion given to the Service, since it could give rise to unlawful activities. And finally, although we approve of the creation of a Review Committee, we feel it is unfortunate that the Committee will not become involved until after the fact and that its action will be limited.

1. FUNCTIONS OF THE CANADIAN SECURITY INTELLIGENCE SERVICE

The Service shall collect, by investigation or otherwise, and analyse and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada.

Although the bill specifies that nothing contained therein authorizes the Service to investigate the affairs or activities of any person solely on the basis of the participation by that person in certain lawful activities, the Service is authorized to provide security assessments or, in the words of the Act, "an appraisal of the loyalty to Canada and, so far as it relates thereto, the reliability of an individual" to departments and, after entering into an arrangement, to Canadian police forces and even governments of foreign states.

The Service may advise any Minister of the Crown on matters that are relevant to the exercise of any power by that Minister under the Citizenship Act or the Immigration Act, 1976.

The Service may disclose the information it has collected to peace officers conducting investigations, the Attorney General of Canada, the Attorney General of a province in which proceedings may be taken, the Secretary of State for External Affairs, the Minister of National Defence and, where circumstances warrant, any Minister of the Crown or person in the public service of Canada.

2. SECTION 22 OF THE BILL INSTITUTES JUDICIAL CONTROL BUT DOES NOT PROVIDE SPECIFIC CRITERIA TO GUIDE JUDGES IN THE ISSUING OF WARRANTS

Section 22 stipulates that a judicial warrant is required to

authorize searches, seizures and the opening of mail. It states that, notwithstanding any other law, on application in writing by the Director or any employee of the Service, the judge may, if satisfied by evidence that a warrant is required to enable the Service to perform its duties and functions, issue a warrant authorizing searches, seizures, the opening of mail or the interception of communications.

It must be understood that this provision will take precedence over all other laws and therefore that the safeguards offered by Common Law and the Criminal Code with respect to confidentiality will be abolished. Consequently, it facilitates access to the personal information held by persons normally bound by professional confidentiality: doctors, lawyers, federal and provincial public servants, social workers and so on.

Not only does this section facilitate access to such information, but it fails to provide judges with criteria to guide them in deciding whether or not such a warrant is necessary.

The McDonald Commission, which agreed with the creation of an intelligence service, clearly formulated such criteria in its extensive report:

Recommendation No 21 (5)

The legislation should direct the judge to take the following factors into consideration in deciding whether the interception is necessary

- (a) whether other investigative procedures not requiring a judicial warrant have been tried and have failed;
- (b) whether other investigative procedures are unlikely to succeed;
- (c) whether the urgency of the matter is such that it would be impractical to carry out the investigation of the matter using only other investigative procedures;
- (d) whether, without the use of the procedure, it is likely that intelligence of importance in regard to such activity will remain unavailable;
- (e) whether the degree of intrusion into privacy of those affected by the procedure is justified by the value of the intelligence product sought.

Because Section 22 is so vague and imprecise, it opens the door to infringements of the right to own property and the right to privacy. In addition, since it interferes with the protection offered by the right to confidentiality of personal information, it risks impairing the effectiveness of the legal safeguards relating to professional confidentiality. This would undermine the confidence of members of the public in those who are in the best position to help them: lawyers, doctors, social agencies, and so on.

We believe that, at the very least, further consideration should be given to the McDonald Commission's recommendations concerning factors to be taken into consideration by a judge before the warrant provided for in Section 22 is issued.

3. SECTION 21 OF BILL C-157 GIVES THE SERVICE FREE REIN AND IMMUNITY

Section 21(1) states that the Director and employees of the Service are "justified in taking such reasonable actions as are reasonably necessary to enable them to perform the duties and functions of the Service".

Section 21(2) clarifies the meaning of "reasonable":

If the Director is of the opinion that an employee has, on a particular occasion, acted unlawfully (our emphasis) in the purported performance of the duties and functions of the Service under this Act, the Director shall submit a report in respect thereof to the Minister and the Attorney General of Canada.

Whether Section 21 is designed to protect employees of the Service by providing them with a defence should they be accused of unlawful activities or whether it is designed to "legalize" in advance activities which would otherwise be unlawful, it seems to us that, as worded, this section may lead to abuses.

It is a dangerous provision, in our opinion, since it is likely to give rise to arbitrary administrative decisions. Moreover, the provision may imply that the legislator is trying to shield the Service from the rule of law, and this is totally contrary to the principles of our democratic society. The preamble of the Canadian Charter of Rights and Freedoms, for example, states that Canada is founded upon principles that recognize . . . the rule of law. Finally, such a provision paves the way for violations of the principle of equality before the law since it grants immunity

to members of the Service by giving them full discretion to act in accordance with the needs of the Service and allowing them to be the judges of the lawfulness or unlawfulness of their actions.

Section 24 of the Canadian Charter of Rights and Freedoms allows a court to exclude evidence obtained "in a manner that infringed or denied any rights or freedoms"; however, this safeguard does not come into play until after the fact and can only be applied if such evidence is presented before a court.

Section 21 opens the door to arbitrary administrative decisions and risks "legalizing" unlawful activities without making it possible to prevent such activities.

4. THE ROLE OF THE REVIEW COMMITTEE

The establishment of a Review Committee responsible for receiving complaints, conducting investigations and making recommendations in cases of alleged disqualifications on the basis of a disclosure of information is a positive innovation.

This body will handle disputes concerning employment and service contracts, matters relating to the Citizenship Act and the Immigration Act, and cases submitted to it in accordance with the Canadian Human Rights Act.

The establishment of the Review Committee will enable persons who, for security reasons, have been discriminated against in the area of employment or service contracts or have been the subject of unfavourable reports under the Citizenship Act or the Immigration Act to learn the reasons for their disqualification, to have the benefit of an investigation and, possibly, to have recommendations made in their regard. Recourse to the committee will be facilitated through the obligation of the Service to advise such persons in writing that the decision affecting them was based on an unfavourable security report.

It must be recognized, however, that the Review Committee will not become involved until it receives a complaint. There are two main drawbacks to this: first, by the time a complaint is formulated, the information will already have been disclosed and the harm will already have been done; second, only those individuals who are well informed and aware of the Act and their rights will avail themselves of this mechanism. Thus, this means of compensating for the Act's shortcomings is a very uncertain corrective measure which cannot take the place of clearer legislative provisions outlining the Service's powers and thereby preventing unreasonable or arbitrary actions.

The recommendations of the McDonald Commission were much more thorough than is the current bill, with respect to both establishing ministerial responsibility and specifying techniques of collecting information.

RECOMMENDATION NO 9

WE RECOMMEND THAT the statute governing the security intelligence agency require ministerial approval for full investigations, indicate the techniques of collection that may be used in a full investigation and stipulate that a full investigation be undertaken only if

- (a) there is evidence that makes it reasonable to believe that an individual or group is participating in an activity which falls within categories of activities (a) to (c) identified, in the statute governing the security intelligence agency, as threats to the security of Canada; and
- (b) the activity represents a present or probable threat to the security of Canada of sufficiently serious proportions to justify encroachments on individual privacy or actions which may adversely affect the exercise of human rights and fundamental freedoms as recognized and declared in Part I of the Canadian Bill of Rights; and
- (c) less intrusive techniques of investigation are unlikely to succeed, or have been tried and have been found to be inadequate to produce the information needed to conclude the investigation, or the urgency of the matter makes it impractical to use other investigative techniques.

CONCLUSION

Bill C-157 is founded on the objective of protecting national security. According to the Solicitor General of Canada, it also seeks to respect civil freedoms and the right to privacy. We do not share this view. Although the McDonald Commission's 285 recommendations were examined with a view to drafting the bill,

they were not always acted upon. We feel that these recommendations should be taken into consideration in order to prevent the injustices and unreasonable or arbitrary decisions which the current wording of Bill C-157 would facilitate.

In its present form, Bill C-157 adversely affects the protection of certain rights and freedoms. It should therefore be amended in order to provide Canadians with all the safeguards that they are entitled to expect against arbitrary and unreasonable interference by the Canadian Security Intelligence Service.

"Traduction du Secrétariat"

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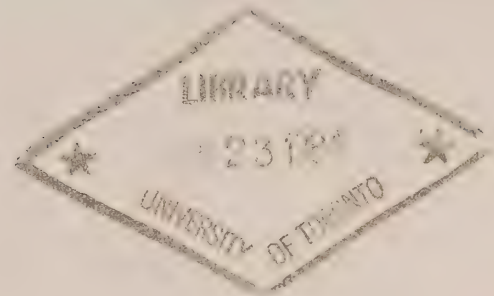
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FEDERAL-PROVINCIAL CONFERENCES OF
ATTORNEYS GENERAL, MINISTERS RESPONSIBLE FOR
CRIMINAL JUSTICE AND MINISTERS
RESPONSIBLE FOR CORRECTIONS

Comments of the Quebec Human Rights
Commission regarding Bill C-157, the Canadian
Security Intelligence Service Act

Quebec



OTTAWA (Ontario)

July 11 - 12, 1983

Quebec Human Rights Commission

COMMENTS OF THE QUEBEC HUMAN RIGHTS
COMMISSION REGARDING BILL C-157, THE
CANADIAN SECURITY INTELLIGENCE SERVICE ACT

July 7, 1983

360, rue Saint-Jacques
Montreal, Quebec H2Y 1P5
(514) 873-5146

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The legislation should direct the judge to take the following factors into consideration in deciding whether the interception is necessary.

- (a) whether other investigative procedures not requiring a judicial warrant have been tried and have failed;
- (b) whether other investigative procedures are unlikely to succeed;
- (c) whether the urgency of the matter is such that it would be impractical to carry out the investigation of the matter using only other investigative procedures;
- (d) whether, without the use of the procedure, it is likely that intelligence of importance in regard to such activity will remain unavailable;
- (e) whether the degree of intrusion into privacy of those affected by the procedure is justified by the value of the intelligence product sought.

Because Section 22 is so vague and imprecise, it opens the door to infringements of the right to own property and the right to privacy. In addition, since it interferes with the protection offered by the right to confidentiality of personal information, it risks impairing the effectiveness of the legal safeguards relating to professional confidentiality. This would undermine the confidence of members of the public in those who are in the best position to help them: lawyers, doctors, social agencies, and so on.

We believe that, at the very least, further consideration should be given to the McDonald Commission's recommendations concerning factors to be taken into consideration by a judge before the warrant provided for in Section 22 is issued.

3. SECTION 21 OF BILL C-157 GIVES THE SERVICE FREE REIN AND IMMUNITY

Section 21(1) states that the Director and employees of the Service are "justified in taking such reasonable actions as are reasonably necessary to enable them to perform the duties and functions of the Service".

Section 21(2) clarifies the meaning of "reasonable":

If the Director is of the opinion that an employee has, on a particular occasion, acted unlawfully (our emphasis) in the purported performance of the duties and functions of the Service under this Act, the Director shall submit a report in respect thereof to the Minister and the Attorney General of Canada.

Whether Section 21 is designed to protect employees of the Service by providing them with a defence should they be accused of unlawful activities or whether it is designed to "legalize" in advance activities which would otherwise be unlawful, it seems to us that, as worded, this section may lead to abuses.

It is a dangerous provision, in our opinion, since it is likely to give rise to arbitrary administrative decisions. Moreover, the provision may imply that the legislator is trying to shield the Service from the rule of law, and this is totally contrary to the principles of our democratic society. The preamble of the Canadian Charter of Rights and Freedoms, for example, states that Canada is founded upon principles that recognize . . . the rule of law. Finally, such a provision paves the way for violations of the principle of equality before the law since it grants immunity

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to members of the Service by giving them full discretion to act in accordance with the needs of the Service and allowing them to be the judges of the lawfulness or unlawfulness of their actions.

Section 24 of the Canadian Charter of Rights and Freedoms allows a court to exclude evidence obtained "in a manner that infringed or denied any rights or freedoms"; however, this safeguard does not come into play until after the fact and can only be applied if such evidence is presented before a court.

Section 21 opens the door to arbitrary administrative decisions and risks "legalizing" unlawful activities without making it possible to prevent such activities.

4. THE ROLE OF THE REVIEW COMMITTEE

The establishment of a Review Committee responsible for receiving complaints, conducting investigations and making recommendations in cases of alleged disqualifications on the basis of a disclosure of information is a positive innovation.

This body will handle disputes concerning employment and service contracts, matters relating to the Citizenship Act and the Immigration Act, and cases submitted to it in accordance with the Canadian Human Rights Act.

The establishment of the Review Committee will enable persons who, for security reasons, have been discriminated against in the area of employment or service contracts or have been the subject of unfavourable reports under the Citizenship Act or the Immigration Act to learn the reasons for their disqualification, to have the benefit of an investigation and, possibly, to have recommendations made in their regard. Recourse to the committee will be facilitated through the obligation of the Service to advise such persons in writing that the decision affecting them was based on an unfavourable security report.

It must be recognized, however, that the Review Committee will not become involved until it receives a complaint. There are two main drawbacks to this: first, by the time a complaint is formulated, the information will already have been disclosed and the harm will already have been done; second, only those individuals who are well informed and aware of the Act and their rights will avail themselves of this mechanism. Thus, this means of compensating for the Act's shortcomings is a very uncertain corrective measure which cannot take the place of clearer legislative provisions outlining the Service's powers and thereby preventing unreasonable or arbitrary actions.

The recommendations of the McDonald Commission were much more thorough than is the current bill, with respect to both establishing ministerial responsibility and specifying techniques of collecting information.

RECOMMENDATION NO 9

WE RECOMMEND THAT the statute governing the security intelligence agency require ministerial approval for full investigations, indicate the techniques of collection that may be used in a full investigation and stipulate that a full investigation be undertaken only if

- (a) there is evidence that makes it reasonable to believe that an individual or group is participating in an activity which falls within categories of activities (a) to (c) identified, in the statute governing the security intelligence agency, as threats to the security of Canada; and
- (b) the activity represents a present or probable threat to the security of Canada of sufficiently serious proportions to justify encroachments on individual privacy or actions which may adversely affect the exercise of human rights and fundamental freedoms as recognized and declared in Part I of the Canadian Bill of Rights; and
- (c) less intrusive techniques of investigation are unlikely to succeed, or have been tried and have been found to be inadequate to produce the information needed to conclude the investigation, or the urgency of the matter makes it impractical to use other investigative techniques.

CONCLUSION

Bill C-157 is founded on the objective of protecting national security. According to the Solicitor General of Canada, it also seeks to respect civil freedoms and the right to privacy. We do not share this view. Although the McDonald Commission's 285 recommendations were examined with a view to drafting the bill,

they were not always acted upon. We feel that these recommendations should be taken into consideration in order to prevent the injustices and unreasonable or arbitrary decisions which the current wording of Bill C-157 would facilitate.

In its present form, Bill C-157 adversely affects the protection of certain rights and freedoms. It should therefore be amended in order to provide Canadians with all the safeguards that they are entitled to expect against arbitrary and unreasonable interference by the Canadian Security Intelligence Service.

1. The first part of the paper discusses the importance of maintaining accurate records of all transactions. This is essential for the proper management of the company's finances and for ensuring that all stakeholders are kept informed of the company's financial health.

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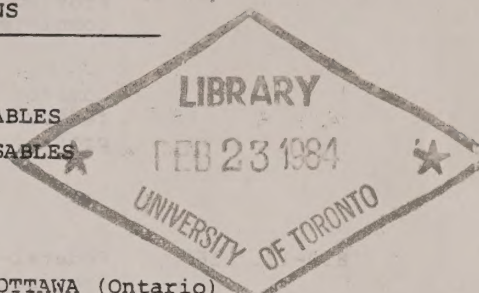
5. The fifth part of the paper discusses the importance of maintaining accurate records of all transactions. This is essential for the proper management of the company's finances and for ensuring that all stakeholders are kept informed of the company's financial health.

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FEDERAL-PROVINCIAL CONFERENCES OF
ATTORNEYS GENERAL, MINISTERS RESPONSIBLE FOR CRIMINAL JUSTICE
AND MINISTERS RESPONSIBLE FOR CORRECTIONS

CONFERENCES FEDERALES-PROVINCIALES DES
PROCUREURS GENERAUX, DES MINISTRES RESPONSABLES
DE LA JUSTICE PENALE ET DES MINISTRES RESPONSABLES
DU SYSTEME CORRECTIONNEL



OTTAWA (Ontario)

OTTAWA (Ontario)

July 11 - 12, 1983

Les 11 et 12 juillet 1983

LIST OF PUBLIC DOCUMENTS

LISTE DES DOCUMENTS PUBLICS

DOCUMENT NO. N° DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
830-131/001		Final Agenda Ordre du jour définitif
830-131/004	Federal-Provincial Task Force Groupe d'étude fédéral-provincial	(1) Report of the Federal-Provincial Task Force on Justice for Victims of Crime D.S.S. Catalogue No. JS42-15/1983E Rapport du groupe d'étude fédéral-provincial sur la justice pour les victimes d'actes criminels M.A.S. n° de cat. JS42-15/1983F
830-131/013	Ontario Ontario	Report presented to the Deputy Ministers of Justice, Deputy Attorneys General and Deputy Solicitors General by the Federal-Provincial Committee of Criminal Justice Officials with respect to the McDonald Commission Report - June 1983 Rapport du comité fédéral-provincial des fonctionnaires chargé de la justice pénale présenté aux sous-ministres de la justice, sous-procureurs généraux et solliciteurs généraux adjoints au sujet du rapport de la Commission McDonald - Juin 1983
		(1) Copies of this document are available from Authorized Bookstore Agents or by mail from Canadian Government Publishing Centre Supply and Services Canada Ottawa, Canada K1A 0S9 Copies de ce document sont disponibles du Centre d'édition du gouvernement du Canada Ottawa K1A 0S9

DOCUMENT NO. N° DU DOCUMENT	SOURCE ORIGINE	TITLE TITRE
830-131/015	Federal-Provincial Committee	Final Report of the Federal-Provincial Committee on Enforcement of Maintenance and Custody Orders in Canada
	Comité fédéral-provincial	Le rapport final du Comité fédéral-provincial sur l'exécution au Canada des ordonnances de pension alimentaire et de garde d'enfant
830-131/016	Federal-Provincial Working Group	Report of the Federal-Provincial Working Group on Central Registry for Security Interests in Aircraft
	Groupe de travail fédéral-provincial	Rapport du groupe de travail fédéral-provincial sur le registre central des sûretés réelles sur aéronef
830-131/021	Federal	(2) Report of the Federal-Provincial Task Force on Justice for Victims of Crime - Highlights (July, 1983) D.S.S. Cat. No. JS42-15/1983-1
	Fédéral	Rapport du groupe d'étude fédéral-provincial sur la justice pour les victimes d'actes criminels - Points saillants (Juillet 1983) M.A.S. n° de cat. JS42-15/1983-1
830-131/027	Québec	Commentaires de la Commission des droits de la personnes du Québec sur le projet de la loi C-157 <u>Loi sur le service canadien de renseignement de sécurité</u>
	Quebec	Comments of the Quebec Human Rights Commission regarding Bill C-157, the Canadian Security Intelligence Service Act
830-131/033	Secretariat	List of Public Documents
	Secrétariat	Liste des documents publics
		(2) Copies of this document are available from the Communication Division Programs Branch Solicitor General Canada Ottawa K1A 0P8 Copies de ce document sont disponibles de la Division des communications Direction des programmes Solliciteur général Canada Ottawa K1A 0P8

